







# Constitutional Developments IN THE Islamic World

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## FOREWORD

The Near East, in the last war, was the scene of gigantic transformations and again, in the present war, it threatens to be the tragic stage on which the unmaking and remaking of nations and empires will be played. The Near East is also the great causeway of conscious and unconscious collaboration between the East and the West, between Islam and Christianity. The racial pattern is dominantly Islamic and the Islamic nations have naturally taken the lead in evolving some system of rational living and administration in this chaotic quarter of a century (1914-1939). The aspirations and government of the peoples here are best reflected in their constitutional experiments amidst the most trying conditions created by the conflicting European imperialisms. Prof. Ramesh Chandra Ghosh has taken courage in both hands in giving to the general reader, an interesting and reliable survey of Public Administration in the "new-yet-old" nations of the Near East. His treatment is refreshingly non-technical and yet it is based on a scientific sifting of evidence and criticism of available materials. An ardent student of History and Economics that he is, Prof. Ghosh has shown himself eminently fitted for the task. When on my return from the British Commonwealth Relations Conference of Sydney (1938), I was called upon to serve the newly founded (1939) Bengal Branch of the Indian Institute of International Affairs, as its chairman, my esteemed colleague Prof. Ghosh came to help the Institute as its Research Associate, and its Honorary Librarian. There in its meetings we came to realise the importance of a survey of the constitutions of the Near Eastern nations. Several chapters of Prof. Ghosh's book were also read and discussed in the

International Relations Club, founded by me in the University of Calcutta (1934) with the co-operation of the Carnegie Endowment for International Peace, New York. There we found, that even in a leading University town like Calcutta, the collection and classification of materials on the economic, constitutional and cultural life of the present-day Asiatic nations and states are far from satisfactory. State-Papers, Year-Books and authoritative journals rarely reach and are still more rarely preserved in our Calcutta Libraries. This makes the work of a serious scholar like Prof. Ghosh extremely difficult. It must be said, nevertheless, to his credit, that he spared no pains to trace all important facts in the constitutional life of the Near Eastern nations to their authentic documentary sources, often buffeting with great difficulties. Prof. Ghosh has loyally and admirably served the cause of international understanding and co-operation, by publishing the present volume, which I hope, will help scholars as well as the general public, in appreciating the significance of the constitutional experiments of the Islamic nations of the Near and Middle East.

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## INTRODUCTION

Of all the world religions, Islam is the latest. And yet no other religion has so emphatically and persistently, in word and action, pointed out the oneness of God and equality of men. The Prophet said : "The white man is not above the black, nor the black above the yellow ; all men are equal before their master." The differences of race, language and culture are, to Islam, simply differences on a canvas, poignantly expressing the central unity of humanity. In the days of the *Khulafa-i-Rashidin*, Islam produced a wonderful theocratic-communistic democracy. The Caliphs were elected by and responsible to the people. *Amrohum shura bainahum*.<sup>\*</sup> In later days *Sultanat* came to mean, under Persian influence, absolute sovereignty. Caliphs became votaries of sensuality and *Waziru-t-Tafwidhs* became autocratic governors. The Ottoman Sultans exploited religion to extend their vast empire which was tottering under the very dead-weight of its inhumanity. The political earthquake which occurred in the very seat of the Caliphate after the humiliating Treaty of Sevres, produced convulsions all over the Islamic world. In the decades that followed the most outstanding feature in the socio-political life of the Islamic world is the growth of nationalism.

Conceived in millions of suffering hearts, sanctified by a quasi-religious sentiment, nourished by the blood of martyrs, nationalism is a "will to live" of the dying peoples of the Orient, a natural and collective reaction to their economic exploitation and political domination by the great European Powers. A common ideal, a common suffering, a memory of having shed blood in common on the battlefield, rather than having common blood in the vein, form the basis of this Eastern as of the Western nationalism. It was the

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<sup>\*</sup>The Ruler must consult the Assembly.

battle of Tel-el-Kabir which sowed the seed of Egyptian nationalism in 1882. The last Great War gave birth to national Turkey, crowned with glory, again, in the battlefield of Sakariah. The violation of Persian neutrality by Czarist Russia, imperial Britain and old Turkey from 1906 to 1919, produced Reza Shah and the Iranian nationalism. The Ottoman oppression led the Arabs to take up arms against the Caliph-Sultan. In Syria, Algeria, Morocco and Tunis history is repeating herself. The Berbers, the Kabyles, the Riffis, are all foaming and fretting under French tyranny. The fear of foreign invasion, again, has led to the consolidation of the Afghans, sandwiched as they are between two greedy, mighty States, Soviet Russia and British India. It is true that Islamic countries under the domination of European Powers have not secured political concessions simply by violent agitation or armed rebellion. Very often this militancy was severely punished, as in Egypt in 1919, in Iraq in 1920, in Tunis in 1922, in Morocco in 1925, in Syria in 1925 and 1936, in Palestine in 1929 and 1935-37. But how long could European Powers keep the awakened Islamic peoples under their subjection, even if there had been no "conflict of wills in Western Europe," and even if they had agreed to expend their "blood and treasure" in crushing humanity ?

Nationalism in the Islamic world has become a great rejuvenating force. It has broken down the barriers of sectarianism, suppressed medieval feudalism, uprooted senseless religious taboos, given the women their freedom, introduced science and mass education, revived trade, industry and commerce. It has fused peoples of diverse religions, sects and tribes into great political organisms with single consciousness, single feeling, single ambition. The Moslems and the Copts of Egypt ; the Shiahs and the Sunnis of Iraq ; the Christians and the Moslems of Syria and Palestine ; the Bakhtiaris, the Ghashghais, the Lurs, the Turcomens of Iran ; the Mongols, the Tajiks, the Nars, the Kafirs of Afghanistan

—are all imbued and inspired with a love for their common fatherlands.

This nationalism, again, has taken a distinctly secular turn. Partly out of the rigorous necessities of modern life, partly in conformity to a renovated conscience—both due to the impact of Western science and culture on the Eastern mind, and an appreciation of the patent truth of European political supremacy—Islam is undergoing a thorough overhauling. Before the piercing rays of acute rationalism, the darkness of dogmas is retreating. But the fundamentals of the creed stand colossus-like, baffling the buffetings of stark materialism. There is no longer any calamitous confusion between things that are Cæsar's and things that are God's. There is no more any *Dar-ul-Habab* (Land of the Infidels). *Jihad* is as dead as mutton, as obsolete as the Crusades. Islam has got back to its own and become pacifist, accommodating. *Ulemas* have joined hands with patriots in defending their frontiers and reforming their social systems. Turkey abolished the Caliphate in 1924 and became a secular State in 1928. In Egypt, Persia, Iraq, Afghanistan, Saudi Arabia, Islam is the state religion. But in Egypt, muftis like Mohammed Abdu, writers like Abdul Razak and Taha Hussein, political leaders like Zaglul Pasha and Nahas Pasha, have ceaselessly contributed to the growth of a new Islam, which has made peace with science and has ceased to dominate by dogmatic 'fatwas' every aspect of human life—social and personal, material and spiritual. In Iran, the *Quamun-i-Shari* has been strictly limited to questions of personal status. But there, as in every other Islamic country, statutory legislation has not ceased to make inroads even into the domain of the *Sharah*. Of course, under Articles 2 and 71 of the Supplementary Constitutional Law of 1907, no Act of the Persian Legislature can violate the *Sharah*, and a committee of five *Ulemas* can declare such a law *ultra-vires*. But it must be remembered that the spirit of the Persian constitution has

been more liberal than its wording. The divorce law of 1931, like that of Egypt of 1929, and the marriage law of 1935, have granted women right of divorce and raised their minimum marriage age to 15 years, in direct violation of the *Sharah*. In Afghanistan, the reforms of the late King Nadir Shah were as revolutionary as those of the ex-King Amanullah. Art. 8 of the Royal Charter of 1929 declares : "Knowledge and science are most important for the material and moral development of Afghanistan ; hence the present Government attaches extreme importance to this matter." Art. 13 of the Iraqi Constitution guarantees freedom to practise different religions to all inhabitants, provided that it does not "conflict with the maintenance of order and discipline or public morality." This freedom of religion has been granted by all the Islamic States. In secular Turkey women have got equal franchise. In modernist Egypt, Iraq, Iran, they enjoy all social rights equally with men, e. g. co-education, right to divorce and possess property, etc. In conservative Saudi Arabia, as in Afghanistan, Morocco, Algeria, Tunis, Yemen, feminine movement is still insignificant and the *Sharah* dominant. The left wing of the Islamic world is Turkey and the Moslem Soviet Republics ; the centre Egypt, Iran, Iraq and Afghanistan ; and the right wing Saudi Arabia, Yemen and Al-Maghrib.

One interesting result of the national movement in the Near and Middle East is this that all the important Islamic States possess written Constitutions with separation of powers and the fundamental rights of the people specifically mentioned. Another interesting feature in the Constitutions of all the progressive Islamic States, excepting Turkey, is the prevalence of bi-cameral legislatures with adult male suffrage, but indirect election. Turkey has an unicameral legislature based on universal franchise. All these legislatures are over-working themselves to promote the happiness of the people. Everywhere *salus populi suprema lex*.

Great Britain has played a very important role in the evolution of the Constitutions of those Islamic countries over which she had a protectorate or a mandate. Everywhere she has exerted her political power in securing (1) the formation of national states ; (2) the gradual development of responsible government ; (3) and the protection of the rights of minorities. But the guiding motive behind all her activities in the Near and Middle East has been the securing of the safety of her imperial communications, which has always been the condition precedent to any grant of self-government to the peoples under her control. This she has secured by bilateral treaties with Transjordan in 1928, with Iraq in 1930 and with Egypt in 1936. Imperial considerations have led her to deny the Palestinian Arabs self-government and to create an artificial Home of the Jews in the very heart of the Islamic world. France has followed a similar policy in Lebanon ; but whether in the mandated territory of Syria or in the protectorate of Morocco and Tunis, or in her Algerian colony, where there are more than 7 million Moslems and less than one million Frenchmen, she has unfailingly pursued a policy of economic exploitation and political domination. Her liberality does not extend beyond the grant of spectacular but impotent French citizenship to the natives with a view to assimilating them with the metropolis. France cannot dream of Dominion Status or colonial responsible government. She refuses to recognise Moslem nationalism or political consciousness. Undoubtedly this will engender, in time, a fitting revolution in the Al Maghrib. The Dutch, on the other hand, after following, for so many years, a ruthless imperial policy in the East Indies, exacting from the natives forced labour worse than the *corvée*, have at last conceded to them a semblance of constitutional government by the Netherlands East Indies Act of 1925. But the Governor-General, subject to the Government at the Hague, is irresponsible to the people. The Volksraad is only a house of debate.



Soviet Russia has played a different role. She has always offered a hand of friendship to the neighbouring Islamic States in the days of their dire distress. When the Allied Powers were baiting Kemal in Anatolia, Soviet Russia concluded a treaty of friendship with the Nationalist Government of Turkey. Again, when Persia was going to be swallowed up by Great Britain in 1919, Soviet Russia threw her influence in favour of the oppressed and concluded a helpful treaty with Reza Shah in 1921. Similarly, the liberal spirit permeating the British treaty proposals to Afghanistan, recognising her full independence, after the easy defeat of Amanullah's forces in 1919, was mainly due to the Soviet's preparedness to help King Amanullah, who in recognition of this friendly spirit concluded a treaty with Russia in 1921. Within her own frontiers, there are more than 15 millions of Moslems in six completely self-governing Moslem republics (Azerbaijan, Turcomen, Uzbek, Tadzhik, Kazakh, Kirghiz). Each of them is a constituent member of the U. S. S. R., with the usual Soviet form of government in which the toiling millions are sovereign.

The victory of nationalism is the victory of culture over brute force, of democracy over tyranny. All the Islamic States excepting Turkey, which is a secular, democratic Republic, and Saudi Arabia, an absolute monarchy—are under constitutional monarchs. But as the early Caliphs were not hereditary kings, but rather elected leaders of the people, monarchy cannot be regarded as an indispensable institution in Islam, though in 1924 the *Ulemas* of Persia declared a republic to be un-Islamic. Early Caliphs were responsible to the people ; but, according to the constitutional law of Egypt, Iraq, Iran and Afghanistan, the king can do no wrong. In Great Britain, this constitutional maxim has been rendered innocuous by the growth of ministerial responsibility. But in these Islamic States the case is different. In Egypt, though Arts. 48 and 65 of the Constitution clearly provided for ministerial responsi-

bility, yet in actual practice King Fuad and his son and successor, King Farouk, violated this provision and dismissed popular ministers, the former going so far as to suspend the Constitution. This was mainly due to the triangular contest between the king, the Wafdists and the British High Commissioner, of which the wily king did not hesitate to take advantage to increase his royal power. But after the Anglo-Egyptian Treaty of 1936, and under the trying conditions of the European War of 1939, a responsible democratic government based on the confidence of the people is bound to develop in Egypt, if she is to preserve her independence and retain her monarchy. Fortunately, things are moving towards that direction. In Iraq, a similar situation developed after 1924. King Feisal and his son and successor, King Ghazi, exceeded their constitutional powers, the former very often acting on the advice of the British authorities. Under their absolute rule, the tender plant of ministerial responsibility withered away, and the ground was prepared for military *coup d'etats*. In Iran, the strong personality of Reza Shah has forced the Iranian Legislature to retreat to the background, yielding the front to the Executive. Under Art. 67 of the Supplementary Constitutional Law, ministers are responsible to the Legislature, and under Art. 45, the decrees and rescripts of the king acquire legal force only when they are countersigned by the responsible minister. But the Iranian Parliament itself being controlled by the 'Taraghi' or the Government Party, ministerial responsibility has become more apparent than real. The semi-absolutism of the Shah has, perhaps, worked against the emergence of a vivacious democracy and undermined the strength of the nation, as the events of 1941 prove. In Afghanistan, once the citadel of bloody fanaticism, it was not easy to establish parliamentary government. But even there, under the noble guidance of the late King Nadir Shah and his worthy son and successor, King Zahir Shah, the Constitution of 1931 is steadily becoming a powerful lever of democracy.

Under Art. 76, ministers are jointly and severally responsible for all their actions, although they are not members of the Legislature. *The Shura-i-Milli* possesses "full deliberative, advisory and legislative powers in every department of the government." In China, there are 50 millions of Moslems, staunchly national, fighting for the republic under the banner of Chiang-Kai-Sheik.

A word about Pan-Islamism. A critic has remarked : "The collapse of the Caliphate left the Khilafat bombinating in a vacuum, and thereafter the movement lost itself in hopeless disputes as to the future of the Caliphate".\* Yes ; but is it not also true that even without the Caliphate a more powerful pan-Islamism has originated, not for any aggressive glorification of the religion of the Prophet, but as a protest and as a means of defence against the all-devouring imperialism of Europe ? It may be that the restoration of the Caliphate is as impossible as the restoration of the Holy Roman Empire. But, if the great umbilical chord of the Islamic peoples has been cut, their subsequent development along sound and secular national lines, is bound to produce a greater consolidation among the *Ummah* (followers) of Mahomet, whose first expression we have already seen in the Pact of Saadabad, and whose culmination we hope to see in a great Federation of the self-governing Islamic States from Cape Verde to Java—a fitting reply to the arrogant imperialism of Europe, conspiring to keep the millions of the Orient under eternal thralldom.

It remains for me, now, to acknowledge my obligations. My debt to Dr. Kalidas Nag, M. A. (Cal), D. Litt. (Paris), chairman of the Calcutta Branch of the Indian Institute of International Affairs, it is impossible for me to express in words. He has all along been my friend, philosopher and guide. But for his suggestion and encouragement, I could not have

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\*George Young—*Pan-Islamism*—in The Encyclopaedia of Social Sciences, Vol. 6, P. 544, New, York, 1937.

proceeded with the work. I must also record my obligations to Khan Bahadur K. M. Asadullah and Dr. N. Roy, Librarians of the Imperial Library and the Calcutta University Library respectively, for giving me all facilities for research. I cannot let this opportunity go without expressing my heartfelt thanks to Mr. K. Zachariah, M.A. (Oxon), Principal, Islamia College, where I had the opportunity to serve for two years ; to Dr. P. Roy, sometime head of the Dept. of Economics ; and to Mr. S. K. Guha Thakurta, M. A., Mr. T. N. Sen. M. A., Mr. Zahrul Islam, M.A., Professors of Economics, English, and History, respectively. My thanks are also due to Mr. J. M. Sen, B. Sc., M. Ed. (Leeds), Principal, Krishnagore College, whose kindness and sympathy gave succour to my zeal when it was about to flag. I am also much obliged to Mr. B. Halder for helping me in the preparation of the Index. In my capacity as a Research Associate of the Calcutta Branch of the Indian Institute of International Affairs, which is affiliated with The Royal Institute of International Affairs, Chatham House, London, I had occasion to use to my benefit the Library of the Institute of which I happened to be in charge. Several chapters of this book were read by me before the International Relations Club, Calcutta University.

I hope the readers will forgive me for the typographical shortcomings, so patent in this book, and specially for the large number of printing mistakes which disfigure its pages, but caused unavoidably by my sudden transfer from Calcutta to Krishnagore during the time it was in the press. The Errata, it is hoped, will make amends to a certain extent for this unfortunate feature of the book.

GOVERNMENT COLLEGE,  
*Krishnagore*,  
 October, 1941.

RAMESH CHANDRA GHOSH



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# Constitutional Developments in the Islamic World

## CHAPTER I

### TURKEY

Modern Turkey arose, like a phoenix, out of the ashes of the Ottoman Empire. There are no more the Sultans, their Vizirs and 'rayas', their harems and eunuchs. Turkey, to-day, is an ethnic homogeneity, soberly national, republican, secular and pro-socialistic. We shall not enter into the history of the rise and fall of the great Ottoman Empire from 1230 A. D. when Ertroghul with his mighty bands from Central Asia swept across north-western Anatolia,—to 1918, when as a result of her defeat in the Great War, Turkey stood shorn of all her imperial possessions, European and Asiatic, completely overwhelmed by Allied diplomacy and threatened with Greek and Italian ambitions in Asia Minor. Nor can we go here into the details of those four black and vile Agreements and Pacts (the Constantinople Agreement of March 18, 1915 ; the Secret Pact of London, April 26, 1915 ; the Sykes-Picot Agreement of May 16, 1916 ; and the Maurienne Agreement of April 17, 1917 ) among Great Britain, France, Italy and Czarist Russia, which intended to transfer Constantinople and the Straits to Russia, and "an equitable share of the Mediterranean region adjacent to the province of Adalia" to Italy ; to set up independent Arab States, and territorial zones of influence under Great Britain and France ; and to establish Italian control on West Asia Minor including



Smyrna.<sup>1</sup> Here, we shall deal with the evolution of constitutional government in Turkey with such further incidental observations as are absolutely necessary for a proper background.

Constitutional government in Turkey may be said to have begun, though in an imperfect way, from 1839 when the Hatti-Sherif of Gulhane was proclaimed by Sultan Abdul Mejid. But as the form of government which Turkey retained up to 1909 was predominantly based upon the structure built up by almost two hundred years of administrative practice and usage,—from the days of Osman (1289—1326), when the first Vizir Allaiddin was appointed, to 1526, when Suleiman the Magnificent routed the Hungarians in the great battle of Mohacz,—it is necessary that a short review of that system should be given here. To the Turks, the state was a tent. The 'Lofty Gate of the Royal Tent'—translated in Italian as *La Porta Sublima*—was first the seat and then the denomination of the Imperial Ottoman Government itself. The territory of the Empire extended from the Euphrates to the Hungarian border, including Hejaz, Yemen, Syria, Palestine, Mosul, the Black Sea zones, Egypt, Thrace, Bulgaria, Yugoslavia, Rumania. The subjects of the Empire were Christians, Moslems, Jews, Armenians and Orthodox Greeks. The Government was despotic. As Lybyer says, it was "feared from the shores of the German Ocean to the borders of India." The Ottoman fleet ruled the waves from Gibraltar to Bombay and the favour and good-will of the Sultan were sought by powers great and small in Asia, Africa and Europe.<sup>2</sup>

The Sultan was autocratic, having absolute right over his subjects. He was the Caliph, the Padischa, the "Hunkiar",

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1. A. J. Toynbee and K. P. Kirkwood : *Turkey*, pp. 69-70.

2. A. H. Lybyer : *The Government of the Ottoman Empire in the Time of Suleiman the Magnificent*, 1913, p. 25.

the manslayer. But there were limitations upon his power. There was the Sheri or the Sacred Law of Islam, which the Sultan could not violate or alter. This law often protected the Christian subjects of the Sultan against his whimsical decrees. Secondly, there was the limitation imposed by the laws and institutions established by the royal ancestors which a new Sultan had to follow more or less blindly. Lastly, the settled and immemorial customs of such a conservative people as the Turks were also a restraint upon the Sultan's power of innovation.

The Sultan was succeeded by his eldest son, provided there were no older uncles or cousins in the Ottoman family. The eldest son ascended the throne no matter who his mother was, provided he sprang from the harem. The harem was the unit, a permanent institution in the Empire, and all children born in the harem, whether of free women or of slaves, were legitimate and of equal lineage. There were considerable intrigue and blood-shed amongst the brothers of a Sultan for the throne, to avoid which the Institutes of Mahomet II laid down this horrible injunction : "The majority of my jurists have pronounced that those of my illustrious descendants, who ascend the throne, may put their brothers to death, in order to secure the repose of the world. It will be their duty to act accordingly"<sup>1</sup>. This prescription legalising imperial fratricide was often applied in the seventeenth and eighteenth centuries ; but in the nineteenth, the royal brothers, instead of being killed, were often kept confined in the palace.<sup>2</sup>.

For the purpose of administration, two separate bodies trained and educated on quite distinct principles were developed in harmony with the orthodox principles of Islam.

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1. Quoted by E. S. Creasy in his *History of the Ottoman Turks*, Vol. I. p. 182, from Von Hammer.

2. Lane Poole : *Turkey*, p. 327.

There was the Institution of Government, including the Sultan, his family, the officers of his household, the executive officers of the Government, the standing army and a large body of young men specially trained to wield the sword, the pen and the sceptre. There was the other body, the Institution of Justice and Religion, composed of judges, jurists, educationists, priests, teachers and dervishes—men who had specialised in the creed and law of Islam. The Ottoman Ruling Institution laws were formed on the basis of a slave-family. All the high officers in the State,—ministers, commanders, soldiers,—were slaves of the Sultan. The Janissaries (from 'Yeni Cheri', i.e. new army—formed out of the finest children of the Christian subjects of the Sultan, who were forcibly taken away from their parents by a thousand every year), the Spahis (cavalry) of the Porte, the Vizirs, etc., bore the title of "Kul" or slave of the Sultan who could take, as he very often did, the head of any of them at his sweet will. The Sultan was the chief executive, legislative and judicial authority, in a sense, for, though the Mufti was the highest authority on the Sacred Law, yet it was the Sultan who appointed the Sheik-ul-Islam ; and where the Sheri was silent, there was nothing to prevent the Sultan making Urfs, which, when written, were known as 'Kanoun.'

The Ottoman Government had four chief pillars of the State, viz. (1) the Vizirs, (2) the Kaziaskers, (3) the Defterdars, and (4) the Nishanjis. The Vizirs were four in number in the days of Suleiman, but subsequently the number was raised to nine. The Grand Vizir was not a *primus inter pares*, but far above his fellow-vizirs. He represented the Sultan as the head of the civil and military administration, and as the supreme judge. He appointed the highest officials of the State, presided over the meetings of the Divan four days in the week, was in charge of the Imperial Seal, could summon special meetings of the Divan, received visits of

state from the Kaziaskers, Defterdars, Agha of the Janissaries, Magistrates and Sanjak Beys. But as a 'Kul' his position was not secure. As Lybyer says: "Of some two hundred men who served as Grand Vizirs in the course of five hundred years, about twenty were executed at the time of their deposition"<sup>1</sup>. The financial business of the State was managed by two principal Defterdars, one for Roumelia, the other for Anatolia. The total personnel of the Treasury Department numbered more than 800, while there were 25 financial bureaux, each under a Khojagn. But instead of one fund and one treasury, there were at least 15 bureaux, each receiving and spending quite independently. Besides, each Beylerbey and Sanjak Bey had his own independent financial staff. The Chancery (Nishanji Bashi) was not much developed at the time of Suleiman; the Nishanji's main function being "to authenticate firmans sent to the provinces, by tracing at the head of each document the Sultan's 'tughra' or official signature"<sup>2</sup>. Gradually, the Reis Effendi i.e., "Chief of the Men of the Pen," displaced the Nishanji at the head of the Chancery.

There was a Council of State, known as the Divan, composed of the important ministers, the two Kaziaskers, the Defterdars, the Beylerbeys of Anatolia and Greece, the Kapadan Pasha (Grand Admiral) and the Agha (Chief) of the Janissaries, presided over by the Grand Vizir. In its nature, the Divan was a combination of a Cabinet, a Legislature and a Supreme Court. As Heidborn says: "Le divan était à la fois une sorte de conseil d'État, où se discutaient les affaires politiques importantes et une Cour Suprême autorisée à évoquer tout litige devant elle et à connaître notamment des procès entre Ottomans et étrangers qui dépassaient la valeur de 3000 aspres." The decisions of

1. *Op. cit.* p. 167.

2. For the origin of the 'Tughra', see Lane-Poole-*op. cit.*, p. 329.

the Divan required the approval of the Sultan who was often absent from its sittings, while its members "were responsible to him for good behaviour on penalty of their lives".

The judicial system of the Ottoman Empire was formed on quite a different principle. The Judges were recruited from the Ulemas—a section of Moslems very learned in the creed, law and literature of Islam. The Chief Mufti, known as the Sheik-ul-Islam, was the final authority on the Sacred Law and also the interpreter of the constitution. He combined in himself, so to say, the functions of the Pope and of the Supreme Court of the U.S.A. The judges of the Ottoman Empire were divided into five classes, at the top of which stood the greater Mollahs including the two Kaziaskers of Anatolia and Roumelia, and the judges of Mecca, Medina, Constantinople and other chief places—all of them appointed by the Sheik-ul-Islam, with the approval of the Grand Vizir and the confirmation of the Sultan. The lesser Mollahs were the judges of Baghdad, Sofia, Belgrade, etc. Third in order were the Mufettishes dealing with Wakfs. The Kazis were fourth in order—judges of small cities, under the Kaziaskers of Roumelia and Anatolia. Lastly, there were numerous Naibes or judges of villages, having no fixed salaries, but living upon fees and irregular earnings. There were also the courts of the Sanjak Beys and Beylerbeys administering Kanoun, Adet, but not the Sheri. The highest courts were those of the Kaziaskers, who brought important cases before the Divan. The Divan was the court of First Instance in important administrative cases. All cases were appealable and there was no 'law's delay.'

The Empire was divided into provinces, called Vilayets, the number of which varied with the fortunes of war. The Vilayets were sub-divided into districts called "Sanda'ks", each of which again, was made up of several Kazas or communal districts with municipal jurisdiction. A town with its suburbs or a rural canton was called the Nahiya.

The Vilayet was governed by a Pasha with the help of a council of Ayans or Notables. The Pashalics were at first annual appointments, but subsequently some of them became life-appointments. The affairs of the Rayas or Christian subjects of the Sultan were looked after by "officers called Codji Bachis of their own nations, who assessed upon individuals the tax imposed on the district"<sup>1</sup>. But as the system of farming revenues was in vogue (e. g. Mocattehs and Iltezim), the exploitation of the people was considerable.

This system of administration continued in the empire up to 1839 with slight changes, here and there. Selim III (1789-1807) abolished the Ziamets and Timars; an attempt was made to replace the farming of taxes by direct Imperial collection; consultation of the Divan was made obligatory on the part of the Grand Vizir; European military tactics and fortification methods were studied. On June 5, 1826, Sultan Mahmoud destroyed the Janissaries who had become disloyal and unruly. He also closed the courts of confiscation, took away from the Pashas and the Aghas the power of life and death and enjoined that a Raya or a Turk could be punished only when the Cadi had pronounced the judgment and the judge had signed it. Mahmoud himself attended the Divan. By the Firman of 1834, the Capitation Tax could be raised only by a commission composed of the Cadi, the Mussalman governors and the Ayans or municipal chiefs of the Rayas of each district. In the central government many sinecure offices were abolished, and changes were introduced in costumes.

Mahmoud II, was succeeded by Abdul Mejid, and it was in his reign that the Magna Charta of Imperial •Turkey was proclaimed. The Hatti-Sherif of Gulhane<sup>2</sup>.

1. Creasy, *op. cit.* Vol. II, p. 315.

2. For the text of two Hattis, see Creasy, *op. cit.* Vol. II, pp. 452-460.

was the first document by which the Sultan voluntarily imposed some limitations upon his absolute sovereignty. It wanted to establish several new institutions which would "principally refer to these topics : (1) the guarantees which will ensure our subjects perfect security for their lives, their honour and their property ; (2) a regular method of establishing and collecting the taxes ; (3) an equally regular method of recruiting the army, and fixing duration of the service." Iltezim was abolished and the Hatti declared that "each member of the Ottoman society should be taxed in a ratio to his fortune and his ability, and that nothing further should be demanded from him." Laws limiting the expenses of land and sea forces, fixing the period of military service to not more than five years, and guaranteeing religious liberty and public trial to all, were to be passed. A Council of Justice composed of ministers, notables and other members would determine the fundamental law relating to life, property and taxes. As a pledge for this Royal promise the Sultan declared : "We intend to take an oath in the name of the Almighty in the presence of all the Ulemas and Grandees of the Empire and cause them also to swear to that effect." The Edict also tried to increase the salaries and secure the posts of public functionaries.

In 1843 Sultan Abdul Mejid introduced reforms in the Army, by dividing it into two parts : (1) Nizam, i.e. troops in active service for 5 years and (2) Redif, i.e. troops in reserve after service, occasionally summoned together for drill and exercise. By a Firman of 1846, he instituted a Council of Public Instruction and began a scheme of State education. The provincial *medjliss* acquired some administrative competence under the firman of November 28, 1851. The Rayas were admitted into the army and the administration by a decree of May 7, 1855. On February 21, 1856, the Sultan proclaimed the fundamental statute, "Hatti-Humayun", which confirmed the assurances given in

the Hatti-Sherif and preceded the treaty of Paris by several days. Its main object was to placate the European Powers by promising betterment of the conditions of the Christian subjects of the Sultan and establishment of Patriarchal Councils under the inspection of the Sublime Porte. The Hatti contained the following provisions : "A council chosen by the clergy and laity of the Christian and other communities will be entrusted with the direction of the national affairs of each community." All epithets tending to show a difference between one class and another of the Sultan's subjects were to be abolished, and all office, even the military, was to be thrown open to all if they had passed the necessary examinations. Mixed tribunals for hearing inter-communal suits were to be set up, in which witnesses would give evidence after taking an oath according to their religion. Equality of taxation, prison reform, new commercial and criminal codes, abolition of tortures and ill-treatments, direct system of revenue collection, establishment of a central bank, and the promotion of municipal administration were promised. But as Dareste remarks : "la plupart de ces reformes devaient encore rester lettre morte." From 1859 onwards the European Powers occupied themselves seriously with the internal affairs of Turkey. The diplomatic memorandum of October 5, 1859 reminded the Sultan of the inadequacy of the reforms. This was followed by a project of an international enquiry into the conditions of the Christian subjects in Turkey and by an English project for administrative and judicial reforms. In spite of the Hattis, Christian evidence before Moslem courts was not admitted.<sup>1</sup> Nevertheless certain reforming legislations were enacted : the Commercial Code, extracted from the French Code, on Nov. 5, 1850 ; the Penal Code on August 9, 1856 ; the Code of Commercial Procedure on October 15, 1861 ; the Code of Maritime Commerce in 1864. The law of June 10, 1867, conceded to

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1. Luke : *The Making of Modern Turkey* (1936), pp. 59-67.



foreigners the right of possessing immovables subject to local laws.

The Government at this period (1856 to 1876), was constituted of the Sultan at the top, the Grand Vizir, "un deuxieme Sultan," and eleven ministers, viz : (1) the Reis-Effendi (Minister of Foreign Affairs); (2) the Seraskiar (Minister of War); (3) the Court Minister; (4) the Bahric Naziri (Minister of Marine); (5) the Minister of Finance (portfolio created in 1838); (6) the Minister of Public Works, Agriculture and Commerce (1838); (7) the Minister of Police (1846); (8) the President of the Council of Justice who was also the Minister of Justice (1857); (9) the Minister of Public Instruction (1857); (10) the Mustechar of the Grand Vizir, discharging functions of the Minister of the Interior; and (11) the Minister of Forests and Mines (1872). This list should be supplemented, as Ubicini pointed out, by a number of ministers without portfolios, viz, the ex-Grand Vizirs, the President of the Council of State, the Grand Master of Artillery, the Director-General of Customs, etc. Each Minister had his own council, and the members of all these Councils together constituted the Imperial Chancellery. In the Council of State, two representatives from each of the national minorities in the Empire could sit. Besides these, there were two other individuals who deserve mention: the Sheikh-ul-Islam, the chief of the religious and judicial corps, who "rend exécutoire par son *fetwa* toute ordonnance émanée de l'autorité souveraine" and who "sous un Sultan faible, à la conscience timorée, pourrait être le véritable maître de l'État"<sup>1</sup>; and the Kislâr Agasi i. e. chief of the eunuchs, in charge of the harem, exercising considerable influence upon the Sultan and distributing favours "à son gre".

1. Larousse: *Grand Dictionnaire Universel du XIX Siècle*, Tome 15, p. 602.

As regards local government, a Vali governed the Vilayet, a Moutesarif the Sandjak, a Kaimakan the Kaza, a Moudir the Commune (nahie). Each of these heads was assisted by a council composed of the chief religious and civil functionaries of the area ; but the powers of these councils were merely advisory. The judicial system was thoroughly revised by the Law of April 4, 1869, and reconstructed on the European model. First, there were courts of the First Instance—the canton and arrondissement tribunals, each presided over by a Kadi ; secondly, the Courts of Justice (Appeal Courts) sitting in the chief towns of each Vilayet, presided over by the chief of the Magistracy ; thirdly, a Supreme Court at Constantinople acting as a Court of Cassation and of Last Appeal. The latter was divided into two parts—one operating on the affairs of European Turkey, the other on those of Asiatic Turkey, each directed by a Kaziasker, in rank immediately below the Sheik-ul-Islam. The old village courts (Justices of the Peace) were retained. Besides these, there were the following mixed courts : (1) the Communal Courts presided over by the chiefs of religious communities, distributing justice between members of two communities, when the parties did not want to submit themselves to Turkish Justice ; (2) the mixed Commercial Courts—settling disputes between foreigners and Ottoman subjects ; (3) mixed Police Courts for deciding criminal cases ; and (4) the Mixed Maritime Tribunals dealing with cases of maritime commerce arising between Ottoman subjects and foreigners.

The new codes were not read by the Kadis, Muftis or Valis, who, as an authority remarked, “ne connaissent que le Koran et se soucient peu d’étudier les nouvelles lois, pour lesquelles ils ont d’ailleurs une repugnance instinctive...ni les juges ne connaissent les codes nouveauz.....point de *bukshish* point de juge.”

On December 12, 1875, as a result of the Russian menace, an Imperial Irade was issued announcing the beginning of

fresh reforms, just to satisfy the doubts of the European Powers. On September 13, 1876, the new Sultan, Abdul Hamid II, issued an Imperial Hatt which declared, *inter alia* : "it is indispensable to proceed to the establishment of a General Council whose acts shall inspire the nation with all confidence and shall be in accordance with the customs and capacities of the population of the Empire". The chief duty of this Council was to be, according to Safvet Pasha, "preparing and carrying into effect the laws of the Empire and in controlling the budget of the receipts and expenditure of the country." But it was also added that "the will of His Majesty establishes the responsibility of the Ministers and of the functionaries of the State."<sup>1</sup> The Turco-Balkan war raised an international commotion and all the Powers excepting England were eager to intervene. On September 18, 1876, the British Government laid down the following terms as the basis of pacification : (1) The preservation of the independence and the territorial integrity of the Ottoman Empire ; (2) the *status quo*, speaking roughly, both as regards Servia and Montenegro ; (3) administrative reforms, in the nature of local autonomy for Bosnia and Herzegovina ; and (4) similar guarantees against future mal-administration in Bulgaria. By local autonomy, the British Government meant that "the population of these provinces should be granted some voice in the management of their local affairs, and that they should be afforded protection against acts of an arbitrary character".<sup>2</sup>

The Sultan resolutely refused to accord any especial privileges to his Christian subjects. He rejected the proposal of 'local autonomy' and 'protocol', but tried to take the wind out of the sail of the European Powers by announcing

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1. For the translation of this Hatt and the note of Safvet Pasha to Musrus Pasha, see Parliamentary Papers, Turkey, No. 1, 1877, p. 260 and p. 274.

2. *Ibid* : Note of the Earl of Derby to Mr. Macdonell, Foreign Office, Sept. 18, 1876.

general reforms through a Constitution on Oct. 12, 1876. The danger and impossibility of according separate reforms to each province like Bosnia, Herzegovina, Bulgaria, etc., was recognised even by Prince Bismarck, who in a note to Baron von Brincken wrote the following : "Turkey is willing to concede by means of general reforms more than the Powers have asked for. To make concessions to single provinces will bring the other provinces to revolution. The proposed protocol cannot be signed<sup>1</sup>. But France, Russia, Italy and England demanded provincial autonomy under a European concert which meant the virtual dismemberment of the Ottoman Empire. Hence, the Sultan determined both to oppose the protocols and to grant a general reform to the entire empire. Instructions for the election of the members of the National Assembly were laid down. A commission of 18 members presided over by Midhat Pasha elaborated the text, which was promulgated on December 23, 1876. The constitution contained 119 articles divided into twelve parts. The first part (Arts. 1—7) declared the Ottoman Empire indivisible, the Sultan sacred, inviolable, "irresponsible", with prerogatives equal to those of the Western monarchs. The second part (Arts. 8—26) guaranteed the subjects security of person, property, liberty and religion, though. Islam was to be the State religion, and Turkish the official language. The third part (Arts. 27—38) dealt with the ministers of the Crown. Art. 27 declared : "His Majesty may appoint as Grand Vizir and Sheikh-ul-Islam whomsoever he confides in, and thinks right to nominate to those posts. The other Ministers are appointed by Imperial Irade." Art. 35 said that in case of a hostile vote against the Ministry or its measures "the Sultan in the exercise of his sovereignty, orders either a change of minister or a dissolution of the Chamber, subject to the re-election of the Deputies within the period appointed by law". The ministers could be

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1. Parliamentary Papers, *op. cit.*, p. 388.

arraigned by the Chamber of Deputies, and a High Court was to be instituted for their trial. The fourth part (Arts. 39—41) dealt with the security of offices and responsibility of public functionaries. The fifth part (Arts. 42—59) laid down the powers of the General Assembly, which was to be constituted of two Houses, the Chamber of Deputies and the Senate, which must meet on the 1st November each year. The reading of the Imperial speech, freedom of expression of opinion by members and their privileges were mentioned. The initiative of introducing bills belonged first to the Ministry and then to the Chambers. Art. 54 made it clear that no bill would become law until sanctioned by Imperial Irade. The sixth part dealt with the Senate (Arts. 60—64)—a body nominated directly by the Sultan—the number of members not exceeding a third of that of the Deputies. The two Houses had equal powers. The seventh part (Arts. 65—80) dealt with the Chamber of Deputies, the members of which were to be returned in the ratio of one for every 50,000 males of Ottoman nationality. The tenure of the lower House was four years and the two Houses must sit together. Election was indirect and by secret ballot. Candidates were to be of 30 years of age, possess of civil rights and know the Turkish language. After dissolution, the newly elected Chamber was to meet within six months from the date of dissolution (Art. 73). The President and Vice-Presidents were to be selected by the Sultan from a list of candidates elected by the Chamber (Art. 77). The 8th part (Arts. 81—91) provided for an independent and impartial judiciary. The ninth part dealt with the High Court of Justice, to be formed of 30 members, of whom 10 were to be Senators, 10 Councillors of State and 10 chosen from among the presidents and members of the Court of Cassation and Court of Appeal. The function of the High Court was to try all high officers including ministers. The tenth part laid down rules for regulating the Budget and finance and establishing a Court of Accounts. The eleventh

part (Arts. 108—112) provided for greater decentralisation in local government, while the last part (Arts. 113—119) laid down that the constitution could not be suspended under any pretext (Art. 115); that the Senate was to be its interpreter; that the Sultan was to have the exclusive right to expel from the country persons dangerous to the State (Art. 113). By Art. 116 amendment to the constitution could be made only when it had been passed by each of the two Houses with a two-third majority and had received the Sultan's assent.<sup>1</sup>

The Constitution failed to satisfy the Powers as the Sultan was still "irresponsible"; the Senate, a nominated body, was made equally powerful with the Chamber of Deputies; knowledge of the Turkish language was made obligatory for a voting right, etc.<sup>2</sup>. Negotiations were again opened for the grant of autonomy to the Christian subjects of the Sultan, but in 1878 a Russian army entered Adrianople and forced upon Turkey the Treaty of San Stefano. By the intervention of England, this treaty was replaced by another drawn up in the Berlin Conference. The Tsar annexed a district to the east of the Black Sea, including the towns of Batum and Kars, while the provinces of Bosnia and Herzegovina came to be occupied and administered by Austria-Hungary. The Bulgarians, who were separated by the Treaty of Berlin into three divisions, united in 1885 after a bloodless revolution. The Turkish dominion in Europe was now restricted to the Macedonian regions, where Greeks, Servians and Roumanians carried on violent agitation for national self-determination. The New Turkish Parliament which had met on the 21st March, 1877, in the Imperial Palace of Dolma Bagtche, was not destined to live long. During its brief tenure, it

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1. For an English translation of the Constitution of 1876, see Parliamentary Papers, Turkey, No. I., 1877.

2. For a criticism of this Constitution by the Marquis of Salisbury, see Par. Pap., Turkey, No. 2, 1877, p. 33.

enjoyed almost all the privileges and ceremonies attached to the great Parliaments of the West. The speech from the throne was read and great hopes were expressed.<sup>1</sup> But the Russian War sealed its fate, and the wily Sultan, who had already by an Imperial Irade of January 26, 1877, removed and subsequently exiled Midhat Pasha, the father of the Constitution, by an outrageous application of Art. 113 of the Constitution, and who all along had regarded it as a child of foreign parents, prorogued the Parliament indefinitely on February 14, 1878. But the first Parliament demonstrated a considerable amount of independence which exposed the incompetence and corruption of the Pashas, ministers, etc. Indeed, the Parliament was prorogued on that very day when several charges were made against "two Ministers whom the Chamber wanted to be brought before it to give explanations".<sup>2</sup>

The Treaty of Berlin of July 13, 1878, created a number of international obligations for Turkey, especially with regard to the liberty of creed and conscience, the employment in public service and the enfranchisement of non-Mussalman communities in the Empire. Art. 62 of the Treaty says: "In no part of the Ottoman Empire shall the difference of religion be alleged against any person as a ground for exclusion or incapacity as regards the discharge of civil and political rights, admission to the public employments, functions and honours, or the exercise of the various professions and industries. All persons shall be admitted, without distinction of religion, to give evidence before the tribunals". The Treaty also created the province of Roumelia which would have administrative autonomy under the formal authority of the Sultan. The Governor-General should be a Christian, nominated for five years by the Sultan, with the assent of the Powers

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1. For the official translation of this speech, see Par. Pap., Turkey, No. 15, pp. 283-286.

2. Sir Edwin Pears: *Forty Years in Constantinople*, 1915, p. 58.

(Art. 17). An International Commission, instituted under the terms of Art. 18, elaborated the Organic Statute of Roumelia in April 1879, while by Art. 22 the Sultan was obliged "to apply in the Island of Crete the Organic Law of 1868 with such modifications as may be considered equitable."

Humiliated abroad, the Sultan became more autocratic at home. Some important legal reforms were, no doubt, carried out as a result of Western pressure, e.g. the Code of Criminal Instruction, following the French model; the law relating to the formation and composition of tribunals, passed on 17th June, 1879; the Code of Civil Procedure, based on French model, July 2, 1879; the Civil Code, completed after 17 years of labour, in 16 books, based mainly on Islamic jurisprudence. But the Sultan developed a wide system of espionage to crush all popular movements, and re-established "an obscurantist and murderous personal government, of which one of the earliest victims was Midhat himself."<sup>1</sup> Internal troubles were constant in Macedonia; while a large number of Turkish exiles, under Ahmed Riza Bey, were planning schemes of revolution in their "tobacco parliaments"<sup>2</sup> in the Latin Quarter of Paris. This Young Turk Revolutionary Party developed an organisation known as the Committee of Union and Progress with whose ideals the Christians of the Ottoman Empire were strongly in sympathy. The leader of these Young Turks was a liberal in religious ideals, a disciple of August Comte, and a humanist. But the Party did not recognise the principle of self-determination for minor nationalities in the Ottoman Empire, though it stood for enlightened and constitutional imperialism. It raised

1. TOWNBEE and KIRKWOOD—*Turkey* (1926).

2. JOHN MACDONALD—*Turkey and the Eastern Question* (1912)—pp. 47-53



its standard of revolt in Salonika early in the year 1908 and was soon joined by division after division of the Ottoman army and by the Macedonians and the Jews. The Sultan yielded, and the suspended Constitution of 1876 was restored on August 2, 1908. In October and November, the elections to the new Parliament were held in two degrees and in December, 1908, the Sultan opened the Assembly. The President of the Chamber, Kiamil Pasha, though nominated by the Sultan, was responsible to the Parliament, and resigned in Feb. 1909, when a vote of censure was passed against him. Grand Vizir, Hilmi Pasha, a liberal leader, assumed office with an open declaration of the responsibility of the ministry to the Chamber.<sup>1</sup> A counter revolution broke out on April 13, 1909, due to the instigation of the Sultan, and many persons were killed by fanatics in Adana, Aleppo, Mersna, etc. But the army remaining loyal to the Parliament, the rising was crushed and the Sultan was deposed by a unanimous vote of the Parliament on April 27, 1909. The new Sultan Mohamed V, a brother of Abdul Hamid, took an oath of loyalty to the Constitution.

The ambiguities of the Constitution of 1876 were removed by the Parliament within several weeks. 19 Articles were modified, the last Article (Art. 119) was replaced by 3 new Articles, the total number of Articles being, thus, 121.<sup>2</sup> Under Article 3 of the amended Constitution, the Ottoman sovereignty was vested in the oldest male member of the dynasty of Osman according to the long established custom. But the Sultan was required to take an oath of fidelity to the Constitution and the country before the General Assembly. Art. 7 mentioned the prerogatives of the Sultan; his name was to be mentioned during public prayers; coins were to

1. *Pol. Science Quarterly*, 1909, Vol 24, p. 373.

2. For the French text of the revised Constitution, see F. R. Dareste, — *Les Constitutions Modernes*, (1909) Vol. II, pp. 323-43.

be struck in his name ; he was to confer decorations ; he was to appoint the high functionaries of the State in accordance with the special laws ; he was to choose and nominate the Grand Vizir and the Sheikh-ul-Islam ; he was to sanction and promulgate the general laws. The supreme command of all forces of land and water was vested in him. He was to declare war, conclude peace, grant pardon. He was to summon, prorogue and dissolve the Assembly ; but in the last case, he had to convoke the new Assembly within three months from the date of dissolution. In matters of peace, commerce, cession and annexation of territory, or finance or when the fundamental rights of the subjects were touched, he was bound to obtain the approbation of Parliament. Art. 10 guaranteed individual liberty in these words : "Individual liberty is absolutely inviolable. Nobody can be arrested or made to suffer any punishment, on any pretext whatsoever, except in accordance with laws, civil and religious, of the country". Under Art. 12, the press was given liberty : "*elle ne peut en aucune facon, etre soumise á la censure préalable avant l'impression.*" By Art. 27, the Sultan was to confirm by an Imperial Irade, the other ministers who would be chosen by the Prime Minister to form the Cabinet. Art. 35 described ministerial responsibility. When a measure introduced by the Ministry was opposed by the Chamber of Deputies, the Ministry had either to resign or to submit. If after its resignation, the same measure was introduced by a new Ministry, and the Chamber had again opposed it, the Sultan could dissolve the Chamber subject to Art. 7. But if the new Chamber also opposed the measure, then its decision had to be accepted as final. Under Article 36 the Ministry was empowered to issue Ordinances having the force of law **only** in times of crises, and when the Parliament was not in session.\* But such Ordinances had to be sanctioned by an Imperial Irade and presented before the Parliament on its first session. The modified Art. 43 empowered the Assembly

(two Chambers) to meet even without convocation on the 1st. of November, every year. The next Article laid down that the Sultan either on his own initiative or on the demand of an absolute majority of the Deputies was to convoke the Assembly or to prolong its duration if the exigencies so required. Arts. 53 and 54 laid down that the initiative for laws rested with the Ministers, the Senators and the Deputies. All laws had to be passed by the two Houses and receive the Sultan's signature. But the Sultan was bound either to assent to the measure '*dans les delai de deux mois*' or to send it back for reconsideration. In case of urgent bills they had to be sent back within ten days. And if they were passed by the Parliament on fresh deliberation by two-thirds majority, they would become laws automatically. By Art. 77, the Chamber was empowered to elect a President and two Vice-Presidents.

Art. 118 laid down that while elaborating the laws and regulations of the realm, one should follow the religious, moral and civil prescriptions in conformity with the needs of the time and the demands of humanity. Arts. 119 and 120 guaranteed secrecy of correspondence and freedom of association. But the latter Article forbade all secret organisations and those which attempted to destroy the integrity of the Ottoman Empire, to separate politically the diverse Ottoman elements, or to attack and alter the Constitution. This Article clearly shows the influence of the Committee of Union and Progress on the drafting of these amendments. Art. 121 provided for a secret session of the Senate. On the proposal of the Ministers, or five Senators, the proposal being accepted by the majority of the Senators, the Upper Chamber could sit in secret session. But the members of the Assembly could not be excluded from the gallery. It appears, therefore, clear that this new Constitution established in Turkey a constitutional monarchy with ministerial responsibility and parlia-

mentary sovereignty. As E. M. Earle says: "As amended by the Young Turks, the Constitution of 1876 became a liberal charter of Parliamentary Government."<sup>1</sup>

But this Constitution could not work smoothly for the following causes: Firstly, the various communal groups, Christian and Jewish, refused to give up the special privileges, even though these were decidedly anti-national. Secondly, a series of wars (Turco-Italian War of 1911-12; the two Balkan wars of 1912-13, and the Great War of 1914-18) produced complete disorganisation in the country; and instead of scrupulously following parliamentary rules, the Government and the people were deeply engrossed in the problems of war. The financial difficulties of the State were, also, so pressing that it found itself even against its will caught in the net of European financiers and "concessionaires." All these considerations, as also the German military backing, emboldened the Young Turks headed by Enver, Tulaat and Jemal, to set aside the Constitution and to fight the traditional Turkish enemy—Russia—with the avowed object of uniting all Turks under one Government. But this Pan-Turanism could not last long. With declining fortunes in the Great War, most of the leaders fled abroad, while the Sultan, more anxious to save his throne than preserve the independence or integrity of his country, was eager to sign a treaty of peace with the Allies. I have already referred to the four secret pacts by which the Allied Powers tried to divide the Turkish possessions even before she was defeated.

1. *Political Science Quarterly*, 1925, Vol. 40, p. 79.

## POST-WAR TURKEY

The Armistice of Mudros was signed on the 30th October, 1918. Turkey lay vanquished and exhausted at the feet of the victors. Her Asiatic possessions fell under the military occupation of the Entente Powers. The Arabs had revolted and gone over to the side of the Allies. The Government at Constantinople passed from the hands of the Young Turks to those of the Sultan and his 'Entente Liberale'. Proposals for the partition of Asia Minor between the Greeks and the Italians, and of Iraq and Syria between the French and the English, often leaked out. The Sultan in Constantinople was playing into the hands of the Allies. But in far off Anatolia a national movement was slowly raising its head. On May 15, 1919, the Greek army landed at Smyrna to build up a Hellenic Empire. The Turks had before them three options: (1) to demand protection from England; (2) to accept U.S.A as a Mandatory Power over them; or (3) to allow each district to act in its own way. Mustafa Kemal Pasha, the leader of the Nationalist movement, determined to create a Turkish National State. He issued a manifesto to this effect in May, 1919, which being a very important document is given below:

"The integrity of the country, the independence of the nation, is in imminent jeopardy. The Government is unequal to the task for which it has assumed responsibility, the consequence being that our nation is not considered. The energy and the will of the nation alone can save its independence. It is absolutely necessary that a National Assembly shall be formed to protect the country from foreign influence and be independent of all control, so that it will be free to examine the position of the nation and assert its rights

before the whole world. It has been decided to convene a National Congress forthwith at Sivas, which from every point of view is the safest place in Anatolia for that purpose. Every district in all the Vilayets must, therefore, immediately send three delegates each, who possess the confidence of the nation and they must start without delay so that they may arrive as soon as possible. To avoid any danger, this must be kept a national secret and the delegates must travel *incognito* through all the districts, if it should be considered necessary to do so"<sup>1</sup>

The first National Congress met at Erzerum on July 23, 1919; the second one at Sivas on September 4, 1919. Both of them determined to carry on the national struggle ignoring the Government at Constantinople. In the Congress at Erzerum, Kemal after reviewing the entire political situation, "suggested the creation of the National Areopagus founded on the will of the people, and the formation of a Government that derives its strength from this same will".<sup>2</sup> The Congress drew up a manifesto in which the following points were emphasised: (1) "The entire country within its national frontiers is an undivided whole"; (2) "In the event of the Ottoman Empire being split up, the nation will unanimously resist any attempt at occupation or interference by foreigners"; (3) "Should the Government be incapable of preserving the independence of the nation, and the integrity of the country, a provisional Government shall be formed for the purpose of safeguarding these aims. This Government shall be elected by the National Congress, and, if it should not be sitting at the time, the Executive Committee shall proceed to elect it"; (4) "The chief object

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1. Iqbal Ali Shah—*Kemal, Maker of Modern Turkey*—p. 81. Also, "*Speech of the Ghazi*" in October, 1927, translated and published by K. F. Koehler, Leipzig, 1929,—p. 31.

2. *Speech*—*Ibid*, p. 57.

is to consolidate the national forces into a ruling factor and to establish the will of the nation as the sovereign power"; (5) "It is out of the question to accept a mandate or a protectorate"; (6) "Everything that is possible shall be done to secure the immediate meeting of the National Assembly and to establish its control over the proceedings of the Government".<sup>1</sup>

The Congress dissolved, appointing a Representative Committee to execute its policies. The Government at Constantinople had already become a creature in the hands of France, Italy and England. The Allies tried various means to imprison or drive out Kemal from Anatolia and disperse all nationalist associations. Even an American representative advised prominent Turks that they should apply to President Wilson, the Senate and the Congress for (a) the establishment of a suitable government, (b) the extension of public education, (c) the guarantee of freedom in education and religion, (d) the abolition of the Capitulations, and (e) the acceptance of a general Mandate over the whole of the Empire by the Government of the United States. England and France, on the other hand, tried by all means, to prevent the Mandate over Turkey being given to America. They wanted to break up the Turkish Empire so that they themselves might acquire Mandates over Syria, Iraq, Palestine etc. The Congress at Sivas discussed the question of American Mandate in detail. Opinions were divided. Ultimately a resolution was passed inviting an American delegation to come to Turkey to study the country. However, the resolution was not acted upon. The Congress also passed a resolution "to safeguard the Sultanate, the Supreme Caliphate and the integrity of the country against foreign pressure". Ferid Pasha, the Grand Vizir, was preventing the people from communicating with the Padishah, and

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1. Ibid - p. 58.

was himself preparing various plans for surrendering several Turkish Vilayets to the enemies. The Representative Committee of the Congress under the directions of Kemal repeatedly demanded the convocation of the Turkish Parliament, and called upon the town authorities and the "Unions for the defence of the rights of Anatolia and Roumelia" to "complete all the necessary preparations for the elections to take place in the shortest possible time that the law sanctions." It also began to select candidates and insist on fixing the number of Deputies in proportion to the number of inhabitants of each Sanjak<sup>1</sup>. On the 20th. September, the Sultan issued a Proclamation in which he took note of the "so-called dissension which he supposed to exist between the people and the Government" and expressed his ardent desire to expedite the elections and the meeting of the Assembly. The Cabinet of Ferid Pasha resigned on October 2, 1919, and Ali Riza Pasha formed a new one. The new Government promised that the election of the Deputies should take place in perfect freedom. The Representative Committee pointed out that the Chamber of Deputies could meet in Constantinople only on condition that it was given security to perform its duties there freely especially as Constantinople was under the military control of the Allies. The Representative Committee also decided that before going to Constantinople the Deputies should meet in groups in several centres like Trebizond, Samsoun, Ineboli, etc., for the purpose of forming strong parties able to secure their protection in and outside Constantinople. The members should also jointly support the programme agreed upon.<sup>2</sup> In the new Assembly which met at Constantinople on January 19, 1920, after the general elections, the Nationalists were in the

1. Ibid p. 125.

2. For the instructions to the Deputies, see Kemal's *Speech*, Ibid pp. 234—238.



majority. But before the Assembly had met the Allied Powers extended their grip over the Government at Constantinople. They demanded the resignations of Djemal Pasha, Minister of War, and Djevad Pasha, Chief of the General Staff. The Turkish people regarded this as a deliberate attack on the independence of their State. It was also feared that the English might compel the Sultan to dissolve the new Assembly by issuing an Irade. The Representative Committee under Kemal, however, decided that should this happen, the Deputies would meet again at Angora and constitute the People's Assembly.<sup>1</sup> However, the new Chamber elected Rashid Hikmet Bey as its President. The Grand Vizir proposed new reforms, a wider decentralisation and proportional representation. He also expressed the desire of the Government to carry out the terms of the Armistice, and to give full powers to "foreign inspectors for the control of questions connected with justice, finance, public works, police and even the civil administration."<sup>2</sup> But the Constantinople Government secretly contrived to break up the Representative Committee. It began to coerce and intimidate the Chamber. However, a document of great importance drawn up by Kemal was placed before the Assembly and passed by it on January 28, 1920. This is the National Pact, having a short preamble and 6 Articles. It laid down the principles which represented the maximum of sacrifice which Turkey could undertake in consonance with her independence and stability. The first Article, while recognising the principle of national self-determination for the Arabs, strongly demanded the political unity of all Ottoman Muslims united in religion, race and aim.

The second and third Articles also accorded the same principle of self-determination to the three Sappjaks and

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1. *Speech*—pp. 319—320.

2. *Ibid*—p. 325.

Western Thrace. Article 4 demanded the protection of the security of Constantinople and agreed to open the Bosphorous to the commerce and traffic of the world. By Article 5, Turkey agreed to assure the rights of non-Turkish minorities on the basis of reciprocity. Article 6 demanded complete freedom for national and economic development. "For this reason we are opposed to restriction inimical to our development in political, judicial, financial and other matters. The conditions of settlement of our proved debts shall likewise not be contrary to these principles"<sup>1</sup>.

Towards the end of February, the Allied Powers demanded that all Turkish operations against them must immediately stop, though they were occupying the Ottoman territory. The Greeks and the Italians were landing fresh forces in Smyrna. Ali Riza Pasha's Cabinet resigned on March 3, on account of the pressure of the Entente Powers. On that same day the Greeks began their offensive, and occupied Goldshek and Bos Dag. On March 4, 1920 Mustafa Kemal, in the name of the Representative Committee at Angora, sent a telegram to the Sultan in which he requested the sovereign to form a Cabinet having confidence of the people. The telegram included the following:—"All your Imperial Majesty's subjects have united their thoughts and desires around your Throne as Emperor and Caliph, resolved to agree to make every sacrifice to secure the independence and inviolability of your Majesty and the integrity of your Empire."<sup>2</sup> But the Sultan appointed Salib Pasha, a man who was definitely hostile to the Nationalist forces and subservient to the Allied Powers, as the Grand Vizir. On March 16, 1920 all the official build-

<sup>1</sup> For the English translation of the text of the National Pact, see A. J. Toynbee—*The Western Question in Greece and Turkey* (1922)—pp. 209—210.

<sup>2</sup> *Speech*—p. 343.

ings in Constantinople, including the Telegraph Office and the Chamber of Deputies, were "formally and forcibly occupied by the troops of the Entente Powers"<sup>1</sup>

The Assembly at Constantinople was soon dissolved under pressure from the Allies, who threatened, in an Entente communique, to separate Constantinople from the Turks, if "executive unrest or sanguinary persecution should occur". The Nationalist Party became again an outlawed body, but the Deputies who had escaped arrest met on April 23, 1920, at Angora and constituted what is known as the National Assembly of Turkey. In a letter to M. Millerand, Mustafa Kemal Pasha described the position thus: "The Ottoman people, considering that all its rights have been violated and its sovereignty encroached upon, has, by order of its representatives, assembled at Angora and appointed an Executive Council chosen from among the members of the National Assembly, which Council has taken in hand the government of the country". The members of the Assembly reiterated their loyalty to the Sultan, but they refused to recognise his Government so long as "the Caliph Sultan and his Eternal City should remain under the dominion and occupation of foreigners". In the Assembly, Kemal described the constitutional system thus: "There is no power standing above the Grand National Assembly of Turkey. The Grand National Assembly combines in itself the executive and the legislative power. A Council elected and authorised by the Assembly will conduct the affairs of the Government. The President of the Assembly is at the same time President of the Council...As soon as the Sultan Caliph is delivered from all pressure and coercion he will take his place within the frame of the legislative principles which will be determined by the Assembly".<sup>2</sup>

1. *Ibid* p. 360.

2. Kemal's *Speech*, p. 330; also Iqbal Ali Shah—*Op. cit.* p. 165.

A Cabinet was elected which consisted of the following : Bekir Sami Bey (Commissary for Foreign Affairs), Jami Bey (Interior), Fevzi Pasha (National Defence), Dr. Adnan (Public Health), Dr. Riza Nour (Education), Yusuf Kemal Bey (Economics), Jellaluddin Arif Bey (Justice), Mustafa Fehmi Effendi (Sheri and Wakf), Hakki Behidge Bey (Finance), Ismail Fazil Pasha (Public Works), Colonel Ismet Pasha (Chief of the Staff). The Chief of the Staff was included for the first time in the Cabinet. Mustafa Kemal Pasha was President of the Assembly and so the head of the Government. Jellaluddin Arif Bey was the Deputy President, discharging the Speaker's functions in the Assembly.<sup>1</sup> The Law of High Treason was passed on April 29, 1920. The first offensive took place in June, 1920, when the Greeks authorised by France, England and Italy launched an attack against the Turks and captured Brusa and Mudania. The Treaty of Sevres, which proposed lamentable division of Turkey into various spheres of influence of the Great Powers, was signed by the delegates from the Sublime Porte on August 10, 1920. It maddened the Turks who determined to destroy the treaty with bullets and began to organise under Kemal. On January 20, 1921, the Grand National Assembly of Turkey passed and adopted the Law of the Fundamental Organisation—the first Organic Statute of Nationlist Turkey and the basis of all subsequent constitutional developments in that country.

This Statute contained 23 Articles. Art. 1 proclaimed the sovereignty of the people. Art. 2 laid down that "the Executive power as well as the Legislative power are concentrated in the Grand National Assembly of Turkey which alone represents the nation." Arts. 3, 4, and 5 dealt with the name of the Government ; composition of the Grand National

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1. For further details, see Halide Edib—*The Turkish Ordeal*—pp. 144—148.

Assembly and its tenure, which was fixed at 2 years. In case it was impossible to hold new elections, the session of the Assembly might be prolonged for one year only. According to Art. 6 "the general session of the Grand National Assembly takes place on the first of November without convocation." By Art. 7 all legislative powers e.g., the making, modification and abrogation of laws, all executive powers e.g., the conclusion of conventions and treaties of peace, the call for the defence of the country, etc., belonged to this Assembly. By Art. 8 the Assembly was to administer "its governmental departments through mandatory ministers elected by the Assembly." The ministers could be removed by it. Art. 9 says: "The President elected by the Grand National Assembly is the President of the Assembly during one electoral period. In this capacity, he is authorised to sign and ratify the decisions of the council of mandatory ministers in the name of the Assembly. "The Council of Ministers elects the President from among themselves, the President of the Grand National Assembly is, however, at the same time, by right, President of the Council of Ministers." Arts. 10-14 dealt with local administration. The country was to be divided into several Vilayets, each of which would have considerable "autonomous personality," purely local affairs being managed by an administrative committee chosen by the Vilayet Council from among its members. The chief executive in the Vilayet would be the President of this Administrative Committee, but the Vali, representing the Grand National Assembly in the Vilayet, and being appointed by it, would administer the national affairs in the Vilayet. The remaining Articles dealt with the administrative system in the Kazas and Nahies and the grouping up of the Vilayets into inspectorates which would be so many links between the Assembly Government and the Vilayet administration. The Constitution, therefore, remained silent on

the Sultanate, though the Angora budgets provided for the Civil Lists of the Sultan Caliph. This Fundamental Law of 1921 did not make any provision for a Senate. The Cabinet was to be elected by the Assembly, and the Ministers were to be individually responsible to it. The Sultan was stripped of all political prerogatives.<sup>1</sup>

The Government at Constantinople tried to open negotiations with Kemal. The Grand Vizir Tewfic Pasha requested the President of the Grand Assembly to unite with him in sending a joint delegation at the Peace Conference to be held in London. The President refused and a separate delegation under Bekir Sami Bey, the Nationalist Foreign Minister, was sent to the Peace Conference which lasted from February 23, to March 12, 1921, but ended in smoke. On March 16, 1921, the Soviet-Turkish Treaty was signed in Moscow. The preamble to this Treaty runs thus: "The two parties to this treaty hereby affirm that in their struggle for liberation, the peoples of the East are at one with the working population of Russia fighting for a new social order. They emphatically proclaim the right of the peoples of the East to liberty and independence and a form of government in accordance with their own demand." The Russian Government recognised the Nationalist Government at Angora and the two outlawed States began to work in collaboration. With the fall of the White armies under General Wrangel in Southern Russia, Russian arms, ammunitions and gold (£8,000,000), began to reach the Turkish nationalists.<sup>2</sup> On 28th March, the Greek offensive began at Brusa, and for several months Western Asia Minor was filled with horror and bloodshed. On August 5, 1921, the

1. For the text of this Fundamental Law see Clair Price—*Rebirth of Turkey*, pp. 181-183; *Current History*, Vol. XVII (1923) pp. 458-459; Kemal's *Speech*, pp. 477-478.

2. G. M. Godden—*Kemal: the Man and the Movement*—Fortnightly Review, November, 1922, p. 720.

Assembly, which held "the rights of the generalissimo", passed a law investing Kemal Pasha with supreme military powers and "prerogative of the Great National Assembly", for a period of three months. Article 3 of this Law declared: "The Great National Assembly reserves the right to take away the authority and the office of the generalissimo before the term expires, if it thinks necessary".<sup>1</sup> Kemal united the office of the General Staff with those of the Ministry of National Defence and issued various orders for national consolidation. In September, 1921, the Greek army was routed in the great battle of Sakariah. The National Assembly honoured the victor with the title of El Ghazi. The French made the Franklin-Bullion Pact with Turkey on October 20, 1921, by which they withdrew from Cilicia, rejected the Treaty of Sevres, and gave the Nationalist Government a *de facto* recognition.<sup>2</sup> Great Britain protested. The Greeks and the Italians (from Adalia) gradually withdrew from the Turkish soil. By October 1922, the Greeks were expelled from Asia Minor, and on the 11th of that month the armistice of Mudiana was signed.

Meanwhile, some constitutional practices were growing up in the Nationalist Government. The special powers of Kemal were renewed by the Assembly in February, 1922, but the motion for the third renewal was defeated in May, 1922. The Council of Ministers did not, however, resign, and Kemal continued to be the head of the army. On the next day, after the defeat of the proposal for renewal of term, the Assembly passed a bill and gave Kemal the powers he sought, though by another bill it laid down that the Ministers and the President of the Council were to be directly elected by the

1. For the text of this Law, see Halide Edib—*The Turkish Ordeal*—pp. 281-282.

2. For the terms of the Treaty and the correspondence between the French and English Governments, see *Cmd.* 1556(1921) and *Cmd.* 1570 (1922).

Assembly, by secret ballot. A secret ballot was actually held as a result of which Mustafa Kemal Pasha was removed from the office of the President of the Council and Rauf Bey was elected in his place. Kemal continued to be the President of the National Assembly and Rauf Bey held his post from July, 1922 to August, 1933. On October 28, the Powers invited to the Peace Conference at Lausanne, the representatives of both the National Government and the Sublime Porte. This led to the abolition of the Sultanate, for the Sultan had "taken sides with the enemies of the Nationalist Government" during the last four years, and "provoked numerous ills for the country." On November 1, 1922, the Assembly passed a resolution, which contained *inter alia* the following: "Whereas the Turkish people, in the law of Fundamental Organisation, has resolved that its rights of sovereignty and rulership are incorporated in and actually exercised by the Judicial Person of the Great Turkish National Assembly, which is the true representative, and this so completely that these rights cannot be abandoned, partitioned or transferred .....Accordingly the Turkish people considers the form of Government in Constantinople, which is based upon the sovereignty of an individual, as being obsolete from 16th March, 1920, onwards for ever." The resolution separated the Sultanate from the Caliphate and made the latter elective by the Assembly, though the choice would be confined within the members of the House of Osman.<sup>1</sup> On November 4, 1922, Rafet Pasha carried out a *coup d'état* in Constantinople, and on the following morning the Cabinet of Ahmed Tewfik Pasha, the last of the Ottoman Grand Vizirs. resigned. Thus ended the Government at Constantinople. On November 17, the Sultan Mahmed Vahi-uddin placed himself under British protection, fled on board H. M. S. 'Malaya' at Constantinople and left Turkey for ever. Next day, the Assembly

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1. For the text of this resolution, see Toynbee and Kirkwood—*Turkey* (1926) p. 150.



electd Abdul Mejid Effendi as the Caliph of Islam. There were protests throughout Turkey against this radical measure and the "members of the Committee of Union and Progress who could not forgive the Ghazi for stealing their thunder began to murmur and to combine against him, fearing his severity and foreseeing his dictatorship."<sup>1</sup> On Nov. 21, 1922 the Lausanne Conference began its sitting.

The Grand National Assembly used to meet at this time at 1'30 o'clock afternoon, everyday except Friday. In November, 1922, a proposal to invest the Cabinet with the right to dissolve the Assembly was defeated by Kemal, who also began to exercise the right of receiving foreign diplomatic representatives.

The life of the Assembly was coming to an end on April 23, 1923 and with a view to controlling the general elections and maintaining peace, the Treason Act was passed. Its provisions were very general. It declared that "all who willingly by act or writing work against the decision of November 1, 1922, deciding on the abolition of the Sultanate and the incorporation in the personality of the National Assembly of the rights of sovereignty or against the legality of the National Assembly are considered traitors to the Fatherland". This enactment stifled all opposition against the Popular Party of Kemal. As a result of the general election, the new Assembly of 1923 included a high proportion of educated men—56 officers, 17 Pashas, 21 Valis, 25 men of religion, 15 doctors, 9 financiers, 10 jurists, 14 businessmen, 46 notables, 4 poets, 14 journalists, 3 ambassadors, and a number of men of varying callings.<sup>2</sup> The Assembly discussed many constitutional questions. Fethi Bey, the President of the Council of Ministers, read out a Government programme to the Assembly stressing financial reform,

1. *The Times*, Nov. 1938.

2. *Fortnightly Review*, Nov. 1923—p. 743.

invitation of foreign specialists to reorganise the various departments, national education, physical culture, education of girls, development of roads, bridges, ports, etc. The Ministers remained mandatories of the Assembly which retained in itself all executive and legislative sovereignty. Thus, Ismet Pasha went to Lausanne as the plenipotentiary of the Government of the National Assembly. Again, when the Persian ambassador was accredited to Turkey, his credentials were pronounced to be not in order as they referred to "Ottoman Empire", etc. The Prime Minister was definitely subordinate to the President of the Republic i.e., Ghazi Kemal Pasha who was the guiding star of the new State, the leader of the Popular Party and yet the Chief Executive of the Government of the National Assembly.

After several months of protracted negotiations, the Treaty of Lausanne was signed on July 24, 1923. It was accompanied by no less than 11 conventions, declarations, etc. of which five, dealing with the Straits, the Thracian frontier, conditions of residence, business and jurisdiction in Turkey, conditions of commercial operation in Turkey, and the exchange of Greek and Turkish populations, are very important. The treaty solved the problems of boundaries, (Arts. 2-4), minorities (Arts. 37-44), capitulations, (Art. 28), nationality and distribution of the Ottoman Public Debt. Turkey got the whole of Eastern Thrace, including Adrianople, as far west as the Maritsa; Constantinople, the Straits; in the south and south-east, her territory bordered on Syria and Iraq excepting Mosul. She was also given complete sovereignty over the Kurds.

Several Articles of the Lausanne Treaty are very important in relation to the final determination of the fate of the various subject peoples that were under the Government of Turkey before 1914. Art. 16 of the Treaty says: "Turkey hereby renounces all rights and title whatsoever over or respecting

the territories situated outside the frontiers laid down in the present Treaty, and the islands other than those over which her sovereignty is recognised by the said Treaty (i. e. Imbros and Tenedos, under Art. 14), the future of those territories and islands being settled or to be settled by the parties concerned." But as Oppenheim points out, the Treaty does not specify "in whose favour the renunciation was made, but presumably contemplating the States then in occupation of those territories."<sup>1</sup>.

Art. 17 says : "The renunciation by Turkey of all rights and titles over Egypt and over the Sudan will take effect as from November 5, 1914." By Art. 20 Turkey recognised "the annexation of Cyprus proclaimed by the British Government on the 5th. November, 1914," and by Art. 22 she recognised "the definite abolition of all rights and privileges whatsoever which she enjoyed in Lybia under the Treaty of Lausanne of the 18th. October, 1912, and the instruments connected therewith." Art. 27 is more definite. It says : "No power of jurisdiction in political, legislative or administrative matters shall be exercised outside Turkish territory by the Turkish Government or authorities, for any reason whatsoever, over the nationals of a territory placed under the sovereignty or protectorate of the other Powers signatory of the present Treaty, or over the nationals of a territory detached from Turkey. It is understood that the spiritual attributions of the Moslem religious authorities are in no way infringed."

As regards capitulations the Treaty said : "The High Contracting parties agree to abrogate the capitulations relating to the regime of foreigners in Turkey both as regards the conditions of entry and residence and as regards fiscal and judicial questions (Art. 28). The next Article (Art. 29) clearly laid down that the Moroccans and Tunisians are to be regarded by Turkey as French nationals, just as

1. Oppenheim—*International Law*. Vol. I. p. 185.

the Lybians are to be treated as Italian nationals. The Articles relating to the rights of the non-Moslem minorities in Turkey were taken by her as fundamental laws. Art. 38 says: "Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems. All the inhabitants of Turkey without distinction of religion shall be equal before the law". Arts. 37, 38 and 40 guaranteed to all minorities freedom of religion, protection of life, liberty and property, the free use of non-Turkish languages, and family laws and customs. Art. 44 placed these rights under the guarantee of the League of Nations. These rights "shall not be modified without the assent of the majority of the Council of the League of Nations. Turkey agrees that any member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances. Turkey further agrees that any difference of opinion as to questions of law or of fact arising out of these Articles between the Turkish Government and any one of the other Signatory Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Art. XIV of the Covenant of the League of Nations. The Turkish Government, hereby consents that such dispute shall, if the other party thereto demand, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Art. XIII of the Covenant."<sup>1</sup> By an agreement for the exchange of populations, 100,000 Greeks remaining in Turkey were deported to Greece and about 400,000

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For the proceedings of the Lausanne Conference see Cmd. 1814 Vol XXVI of 1923. For the Treaty itself, see Cmd. 1929, Treaty Series No. 16 (1923).

Turks remaining in Macedonia and Thrace were deported by Greece to Turkey, in 1924.<sup>1</sup> By the Straits convention, Turkey agreed not to fortify the Straits, i. e. the Dardanelles, the Sea of Marmora and the Bosphorous. They were to be kept open in times of war or peace. An International Commission was set up at Constantinople under the presidency of Turkey to see that the terms of the Treaty were observed.<sup>2</sup>

Within the course of two and a half years, the programme and the ideal of the National Pact, thus, became realised. On 29th October, 1923, Turkey was declared a Republic. Kemal Pasha was the first President of the Republic and Ismet Pasha the first Prime Minister. Towards the end of the year it was found that the new Caliph was not faithfully following the conditions of his appointment. He wanted "to wear a cloak and turban as worn by Mohammed the Conqueror at the Selamlık". In January the Caliph wanted to send his Grand Chamberlain to Angora, in the manner of the Pope, to discuss his powers and position. It was also rumoured that he was selling the royal treasures. Kemal declared in the Assembly: "Dignity of the Caliphate can have no other importance for us than that of an historical memory. The demands of the Caliph that the dignitaries of the Turkish Republic should enter into negotiations with him constitute a flagrant violation of the independence of the Republic".<sup>3</sup> In the spring of 1924 an appeal for the strengthening of the Caliphate signed by H. H. the Aga Khan and the Right Hon. Seyed Amir Ali was published in three Constantinople papers. Kemal regarded this as a high-handed interference with Turkish

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1. E. M. Earle—*The Treach of Near Eastern Minorities in Asia*, Jan. 1925, pp. 49-70.

2. For the difference between the Treaty of Sevres and that of Lausanne, see Kemal's *Speech*, Ibid, pp. 608-619.

3. Iqbal Ali Shah—Ibid—p. 252.

internal affairs and an attempt to undermine the authority of the Republic. On March 31, 1924, a decree of the National Assembly abolished the Caliphate forever from Turkey and sent Abdul Mejid Effendi into exile. The first three Articles of this law are as follows : Art. 1—The Caliph is deposed. The office of the Caliphate is abolished, since the Caliphate is essentially comprised in the meaning and significance of the words Government (Hukyūmet) and Republic (Jumhuriyet). Art. 2.—The deposed Caliph and all male and female members of the Imperial family of the now extinguished Ottoman Sultanate, including the husbands of the Imperial princesses, are deprived in perpetuity of the right to reside within the boundaries of the territories of the Republic of Turkey. The issue of ladies related to this Imperial family are subject to the terms of this Article. Art. 3—The individuals mentioned in Art. 2 are required to leave the dominions of the Republic of Turkey within a maximum period of ten days from the date of proclamation of the present law.<sup>1</sup> All mention of the Caliph was omitted from the State prayers on Friday and instead the favour of God was implored for the Nation and the Republican Government. The Sheriat or Holy Law was abolished ; religious courts were subordinated to the Ministry of Justice ; education was secularised ; the Ministry of Pious Foundations (Wakf) was suppressed ; the Sheikh-ul-Islam was dropped from the Cabinet, and all these, almost in a week, drove out religion from politics. On April 20, 1924, the new constitution of the Republic of Turkey was voted, published and put into force.

We shall deal with this constitution in detail, but before that, let us finish this historical survey. Towards the end of the year 1924, Ismet Pasha retired due to ill health and

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1. Toynbee—*Survey of International Affairs*, 1925, Vol. I. p. 575. For further details see Amecr Ali—*Caliphate*, in *Contemporary Review*, June, 1915 ; and Toynbee and Kirkwood—*Turkey*, pp. 163-182.

Fethi Bey became the Prime Minister. An opposition party to the Ghazi was formed under Rauf Bey, Kiazim Kara Bekir, Refet Ali Faud Pasha and Adnon Bey. The party took the name of the Republican Progressive Party. Amongst its members there were "three officers whose prestige with the army stood very high and thus a bid was made for the all-important support of the army".<sup>1</sup> The Kurdistan revolt broke out early in 1925. Fethi Bey having failed to crush the revolt speedily, resigned and Ismet Pasha returned to office. The Republican Progressive Party was suppressed as some reactionary and seditious elements were developing within it. The Press was completely brought under control. In 1926 'Tribunals of Independence were set up for the summary trial of persons involved in the plot against the life of the Ghazi, and many Unionists like Shukri Bey, Ismail Jambulât Bey, Karakamal Bey, etc., were executed. The consolidation of the State was complete; the Kurds were subjugated; and the Ghazi was at the highest of his power in 1927. The General Elections were held in this year. The Ghazi himself approved the names of the candidates from the list of members of his Republican Party, submitted to him by his intimate advisers. All his candidates were elected. Only one vote was cast in the whole country for an opposition candidate, and that was by the Ghazi himself. Mustafa Kemal, now longing for relaxation of control and growth of a Parliamentary opposition, helped Fethi Bey, who had returned in 1928 from his post of Ambassador in Paris, to form an opposition, known as the Liberal Republican Party, and himself retired more and more from active politics though always keeping an eye over it. A special session of the Assembly was held to pass temporary measures dealing with

1. Julian Palmer—*Turkish Politics : Persons and Parties in Nineteenth Century and After*, Nov. 1930, p. 594.

economic crisis. The opposition headed by Fethi Bey cast 13 votes against the Government of Ismet Pasha. But this parliamentary opposition could not survive long, and Turkey has ever since been governed by one single political party. Criticising the failure of parliamentary opposition, one writer says : "Her (Turkey's) libertarian institutions were never intended as instruments of the expressionist state, but as badges of her modernity as a nation-state qua nation-state."<sup>1</sup> This is only a half-truth, for real freedom does not simply consist in the right to express diverse views, but also in the successful carrying out of projects which raise the political, economic, social and moral life of a community. The more backward and superstitious a country, and the greater the external danger, the more the concentration of power in the hands of a few.

Amongst the most important reforms carried out in Turkey the following should be noted : In 1926 the monasteries of the dervishes were closed. Western laws were adopted. Equitable divorce laws were introduced. Turkish family law was superseded by the Swiss law. On April 10, 1920, Arts 2, 16, 26 and 38 of the Organic Statute were replaced in such a way that Turkey became a secular State. Islam ceased to be the State religion. Arabian and Persian influences were checked. In 1929 Arabic and Persian language-courses were replaced by the teaching of modern European languages. The Turkish Linguistic Council established at Ankara tried to replace Arabic and Persian words by Turkish ones. The Koran was recited, for the first time, in Turkish translation on January 22, 1932. The Latin characters were adopted as early as 1928. Women were given complete freedom and admitted everywhere as officials and teachers. The national culture of Turkey was not ignored. The Turk Ojagui of 1912 came to be amalga-

1. Hawgood J. A.—*Modern Constitutions Since 1787*, p. 341.



mated with the Republican People's Party in 1931, and in 1932 it transformed itself into "The House of the People", which is to be found in each town of Turkey, advocating both Europeanisation and nationalisation of Turkish culture. All these Houses in which alcoholic drinks and card games are prohibited, include departments for language and literature, fine arts, theatre, sport, bureaus dealing with libraries, museums and exhibitions. As Hans Kohn says: "The influence of educational centres of this sort is apt to be much greater than legislative measures".<sup>1</sup> The Government completely re-organised the economic life of the country, liberating it from the domination of foreign capitalism, and "in her endeavours to nationalise her economic life Turkey has not hesitated to create difficulties for foreigners and foreign corporations."<sup>2</sup> By the Municipal Law of 1930, Turkish women were given the right to elect and be elected municipal councillors. In the General Elections of 1931, the Kemalist Party retained all the seats. Fethi Bey's Opposition Party was deliberately suppressed. Kemal continued to be the President of the Republic and Ismet Pasha the Premier. There were two religious risings, one at Menemen, near Smyrna in 1931, the other at Brusa in 1933. Both were ruthlessly suppressed, "hanging several reactionaries and condemning others to long terms of imprisonment."<sup>3</sup> On July 18, 1932, Turkey became a member of the League of Nations. The next month, the Government decided to appoint women in the police. On December 3, 1934 a law was passed by which "ecclesiastics, whatever their religion or sect, were forbidden to wear religious dress except in place of worship and at religious ceremonies."

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1. *Ten Years of the Turkish Republic in Foreign Affairs*, October, 1933 - p. 149.

2. For a survey of the reforms in Law, Language, Religion etc., see Luke—*The Making of Modern Turkey*, (1930)—pp. 187-234.

3. J. Walter Collins—*Ten Years of Kemalism in Contemporary Review*, August, 1933—p. 183.

On December 5, 1934, the right to elect and be elected a Deputy in the Assembly was given to women by an amendment of Articles 10 and 11 of the Organic Statute.<sup>1</sup> In the General Election of 1935, 399 Deputies were returned, of whom 383 belonged to the Kemalist Party, 17 were women, while 16 seats, that were ceded to the minority communities in Turkey, like the Greeks, Jews, Armenians, etc., voluntarily by the Kemalist Party, were filled by Independents. On March, 1, 1935, the Fifth Grand National Assembly was opened by Kemal Ataturk who was again elected the President of the Republic. The retiring Cabinet came back with this alteration that General Kazim Ozalp, who was for ten years President of the Assembly, was appointed Minister of National Defence in place of M. Zekai Ataycim, while M. Abdul Hali Renka succeeded the General as the President of the Assembly. On July 20, 1936, the Dardanelles Conference completed its sittings and the Montreux Convention was signed. Turkey has thereby regained her sovereignty over the Straits. She has been given the right to close the Straits to warships in times of war when she herself is a belligerent or when she is menaced. But in times of peace or even during war when she is not a party, the Straits are to be kept open to merchant vessels and to warships, when the latter do not exceed 30,000 tonnage.<sup>2</sup> On February 5, 1937, Arts. 1, 74 and 75 were amended in such a way that the principles of nationalism, etatism and secularism have become fortified.

On September 27, 1937, the Premier, Gen. Ismet Inonu resigned due to some difference of opinion with the President of the Republic. M. Djelal Beyer, formerly Minister of National Economy, became the new Prime Minister on October 13, 1937 and in his speech to the

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1. *British State Papers*, Vol. 137 (1934), p. 685.

2. For the Text of the Montreux Convention, see Cmd. 5249—Turkey. No. 1 (1936).

'Kamutay (Turkish Grand National Assembly) on November 9, he developed the principle of Etatism, though individual enterprise was also to be encouraged. On November 10, 1938 Kemal died at the age of 57. Next day, the Assembly unanimously elected Gen. Ismet Inonu as the President of the Republic. The ministry of Djelal Beyer resigned, but on November 12 was reconstituted with himself as the Prime Minister, and all other former Ministers, except those of Foreign Affairs, Justice and Interior. On January 25, 1939 this Ministry resigned and the Assembly voted its own dissolution. The new Kamutay was elected on March 27, 1939 "by ballot of the Executive of Republican People's Party, the only political organisation permitted in the country." There were 424 members including 14 women Deputies, as distinguished from 400 members in the previous Assembly. The Sandjak of Alexandretta, which was ceded to Turkey by France on June 20, 1939 (on condition that Turkey would recognise the inviolable character of the newly drawn Syrian Frontier) became a Turkish constituency from which a member sat in the Kamutay. The new Kamutay elected Gen. Ismet Inonu as President of the Republic on April 3, 1939. The Cabinet of Dr. Refik Saydam, who had taken over the Ministry after the resignation of Djelal Beyer, handed over its formal resignation, but was requested by the President of the Republic to continue in office until the formation of a new government. Saydam Cabinet now contains the following Ministers: The Premier, the Ministers of National Defence, Justice, Interior, Foreign Affairs, Finance, Education, Public Works, National Economy, Agriculture Public Health, Customs and Monopolies, i.e., the Prime Minister and 11 other Ministers.

### The Constitution of the Republic of Turkey

The principles of the Republican Constitution can be traced back to the resolution of the Congress at Erzerum and

Sivas and the National Pact. The Law of Fundamental Organisation of January 20, 1921. served as the basic written constitution during the hectic days of the civil war, the war with the Greeks, the abolition of the Sultanate and the Caliphate. Then, on April 20, 1924, came the great Law of the Constitution ; it repealed former Organic Laws and forms the foundation of the Republic at the present date. This Constitution was amended on April 10, 1928<sup>1</sup> ; on December 12, 1931<sup>2</sup> ; on December 5, 1934<sup>3</sup> ; and lastly, on February 5, 1937.<sup>4</sup> The Constitution contains altogether 105 Articles divided into six sections. The Turkish State is a Republic based on the principles of nationalism, democracy, evolutionism, laicism (separation of state and religion) and "etatism" i.e. State ownership or control of the principal means of communication, industries, mines and public utility services (Art. 1). The official language is Turkish, and sovereignty, though it belongs to the nation without restriction, is exercised by the Grand National Assembly which is "the sole lawful representative of the nation" and in which all legislative and executive powers are vested and centered (Arts. 2—5).

### Executive

The Assembly exercises the executive power through the intermediary of the President of the Republic, who is elected by it from among its members for a period equivalent to that of the parliamentary term (4 years). The President exercises his functions until the election of a new President. He is eligible for re-election. He is the head of the State. He may

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1. Arts. 2, 16, 26 and 38—see *British and Foreign State Papers*—Vol. 133, Part II. (1930) p. 972.

2. Art. 95—see *Ibid*—Vol. 135, p. 944.

3. Arts. 10 and 11—see *Ibid*—Vol. 137 (1934), p. 686.

4. Arts. 1, 74 and 75—see *Keesing—Contemporary Archives*. pp. 2447—48.

preside over the Council of Commissioners in case of necessity. But during his term of office he "may not take part in the discussions or in the deliberations of the Assembly and may not vote." In case of vacancy of the office, due to illness, death or resignation etc., of the President of the Republic, the President of the Assembly (like the Speaker) takes up his duties until the new President of the Republic has been elected by the Assembly. The power of the President is strictly limited to one of suspensive veto, for a period of ten days only, over laws which do not concern the Constitution or the Budget, but if a law is returned to the President after reconsideration by the Assembly, then he must promulgate it. The President, after his election, shall take an oath of loyalty to the Republic, to defend and increase her integrity and dignity and to observe the principles of the sovereignty of the nation. He receives and designates diplomatic representatives; he exercises the right of pardon. He has, by order of the Assembly, the supreme command of the army. He is responsible to the Assembly, only in case of high treason. Art. 39 says: "All decrees promulgated by the President of the Republic shall be signed by the President of the Council and by the Commissioner within whose jurisdiction the measure lies." Therefore, the Ministers are responsible to the Assembly for all measures and decrees. But the Prime Minister is designated by the President of the Republic from among the Deputies, and when, there is one party and no other in the State, and that also controlled by the President, the latter becomes, as the President in Turkey has become, almost a dictator. The other Ministers are chosen by the Premier, but subject to the approval of the President. By Art. 44, the new Government must present its programme to the Assembly within a week and request a vote of confidence. The Ministers are responsible to the Assembly both jointly and individually. Apart from the Cabinet, there is a Council of State (Arts. 51—52) constituted of experienced economists, jurists and

specialists and "those who have held important posts", all chosen by the Assembly. The Council will have advisory power and the Ministers are empowered to issue administrative regulations, not contrary to law, on the advice of the Council of State.

### The Legislature

The Legislature, which is the real sovereign body in Turkey, is made up of one single House containing 424 members, elected by every male and female Turk over 22 years of age. The Deputies must be over the age of thirty, know the Turkish language and must not suffer the usual legal, physical and mental disqualifications. The life of the Assembly is fixed at four years, though in case of an "impossibility to proceed to legislative elections," the period may be prolonged by one year. The Assembly must meet every year on the 1st of November "without the necessity of convocation" and the period of recess shall not be more than six months. "Initiation of legislation rests with the members of the Assembly and the Cabinet" (Art. 15). The Deputies must swear on their honour their loyalty to the Republic. They enjoy immunities from arrest or execution of judgment pronounced against them, during their legislative term, in all cases excepting flagrant crimes, when they may be surrendered by vote of the Assembly. Provisions are made for the special convocation of the Assembly, and for the free publication of its debates. The Assembly has "the right of interpellation and of conducting investigations and parliamentary enquiries." The amended Article 26 is very interesting, it is as follows : "The Grand National Assembly itself performs the following duties : the enactment, modification, interpretation and abrogation of laws ; the conclusion of agreement and peace treaties with States ; the declaration of war ; the examination and approval of laws relating to the general budget and the final State accounts ; the coining of money ; the approval and

annulment of monopolies and contracts or concessions ; the proclamation of general and special amnesties ; the reduction and modification of penalties ; the postponement of legal enquiries and punishments ; and the sanctioning of death sentences which have been pronounced by the courts and have become final." It is thus found that the Turkish Assembly exercises many functions which are exercised in the democracies of the West by the Executive, and even the Judiciary ( e.g. Art. 52 ). The Assembly elects at the beginning of November, each year, its President and three Vice-Presidents, for the duration of one year. It has the power of dissolving itself before the expiration of its term, by an absolute majority vote, while it can impeach one of its members by two-thirds majority. The Budget must be annually submitted before it at least three months before the commencement of the fiscal year. Expenditure of public funds must be in accordance with the Budget or "authorised special law" (Art. 96). A special Court of Accounts is established to audit, verify and control the expenditures and revenue of the State on behalf of the Assembly, and to submit a report thereto to the Assembly within six months after the Finance Minister shall have presented to the Assembly his statement of final accounting. The Articles of the Constitution, excepting Art. 1 can be modified only when the proposal to amend has been signed by one-third and thereafter passed by "two-thirds of the total number of Deputies." The necessity for a Second Chamber as a revising body with greater experience, and as a permanent element in the Constitution, not under the old name of "the Senate", but as a "Council of the Great Specialists," was felt and brought to the notice of Kemal by Kiasim Kara Bekir Pasha, as early as February 18, 1922. But to this Kemal had replied that "it would be irreconcilable with the spirit of the principles followed by us in the general administration to subject the main resolutions of the Grand National

Assembly, which has been or shall be elected by the nation as the guardian of their rights and authority, to the control of another body, although this might not be called a Senate .....Our present system of Government, which has been established under the influence of the consequences of our tragic past, is best adapted for the administration of the nation and represents the most reasonable from the point of view of constitutional rights."<sup>1</sup>

### The Judiciary

The judicial power is exercised in the name of the Assembly by independent tribunals constituted in accordance with the law (Art. 8). Judges are recalled only in conformity with the law. Court trials are public, except in those cases where a secret trial is specified by the Code of Procedure. Judges may not hold any other office. The judicial system has been formed on the French model. At the base there are the *Juges de paix*, or local courts with limited but summary penal and civil jurisdiction. There are the *Tribunaux de base*, each with a president and two assistant judges with wider powers concerning marriage, divorce, probate and civil rights. There are also several Assize Courts under a president and four judges for serious criminal cases. The Court of Cassation (Appeals) sits at Ankara. Members of the Cabinet, the Council of State, the Court of Cassation, and the Attorney-General are to be tried, "in all questions pertaining to the performance of their duties", by the High Court, which is "composed of twenty-one members, eleven of whom are chosen from among the members of the Court of Cassation and ten from among the members of the Council of State" by secret ballot, by the plenary assemblies of each of these bodies. The High Court has a President and a Vice-President, elected by the same

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1. *Speech*, Ibid — pp. 540-541.



procedure. The Bench is constituted of fourteen members and the President. The decision, which is reached by the majority, is not subject to appeal or annulment. The Grand National Assembly may sit when necessary as the High Court of Turkey. Under the terms of the Lausanne Treaty, Turkey undertook to reform her judiciary and to take immediately in service, for such period as it may consider necessary, but not less than 5 years, European legal counsellors for that purpose.<sup>1</sup> As a result, we find in Turkey a series of legislations and codes which have brought the judicial system on a par with that of any Western country. There is the Civil Code based chiefly on the Swiss model ; a Code of Obligations similarly formed ; a Commercial Code based on the German and Italian Codes ; a Maritime Code based on the German Code : a Penal Code based chiefly on the Italian Code ; a Code of Criminal Instructions based on the German model ; and a Code of Civil Procedure based on that of the Canton of Neuchâtel. The Sheri Courts were abolished as early as 1924, Justice, to-day, in Turkey is cheap, impartial and free from religious bias.

### Local Government

Local Government in Turkey, though autonomous within its proper jurisdiction, is strictly under the control of the National Assembly through the Vali in all national affairs. There are now 62 Vilayets, 8 in European Turkey and 54 in the Asiatic. The Vali is appointed by the Minister of the Interior, has an executive council to assist him, and is the president of the vilayet assembly which "meets once a year for a minimum of 15 days and a maximum of 40 days." The delegates to this assembly are elected by *kayas*, into which a Vilayet is divided, in proportion to their population strength. Each *kaya* has a Kaimakan at the head, who is also

1. Cmd. 1814. (1923), p 852.

appointed by the Minister of the Interior. The *kaya* has also a district assembly. It is also sub-divided into *nahiyes* (townships) with the *mudir* at the head of each, this officer being appointed by the district assembly. The *nahiyes* are sub-divided into *kassabas* and villages, the ultimate units.

### Public Law of the Turks

Arts. 68—88 deal with the fundamental rights of the Turks. Equality before law, inviolability of person and property, freedom of speech, press, conscience, religion, association, education, correspondence etc. are guaranteed, subject to law. Right to make complaints or address petitions either to the competent authority or to the Assembly is also given to a Turk. "The reply to an individual complaint must be given in writing to the person concerned" (Art. 82). The Ministry is empowered to decree martial law in case of great public danger only for the duration of one month, after which it is to be submitted to the Assembly who can prolong or diminish the period (Art. 86). Primary education is obligatory for all Turks and is gratuitous in the Government schools. The word Turk is not at all a religious or racial term. It is political, and means any Citizen of Turkey.

### Political Party

There is only one political party in Turkey, the People's Party, later called the Republican People's Party, founded by Kemal as early as December, 1922. Article 1 of the statute of the Party adopted in 1923 reads as follows: "The goal of the Party, government by the people and for the people, together with the elevation of Turkey to the status of a modern State." The other Articles demand the complete separation of religion from politics; social organisation on the basis of modern civilization and the empirical and positive sciences;

equal rights for all citizens, including women. The Party has a President who appoints the Vice-President and the General Secretary. These three together form the Presidial Council which designates the candidates for the parliamentary elections. Twelve party-inspectors are nominated by this Council to look after the organisation of the Party throughout the State. The decisions of the Council are binding on all members of the Party. Kemal was the Life-President. As all the members of the Assembly are nominated by the Party's Council, the President of the Party, who is also the President of the Republic, naturally controls the Grand National Assembly.<sup>1</sup> After Kemal's death General Ismet Inonu was elected President of the Party for life on December 27, 1938. He is also the President of the Republic. The principles of the Party were altered and made more radical in 1938. They are six in number, viz. (1) Republicanism ; (2) Popularism, i.e. popular sovereignty, but no class war ; (3) Etatism, including State ownership of important means of production, communication, etc., and State control of private enterprise ; (4) Nationalism ; (5) Secularism—separation of religion from politics ; and (6) Revolutionism, meaning that the Party does not believe in political evolutionism or slow gradual progress but preserves a dynamic attitude to all problems 'in conformity with the principles born of the Revolution.'

The constitution of Turkey is a 'sui generis,' a type by itself, quite different from that of the Parliamentary Government of Great Britain or the Presidential Government of U.S.A. or France. It resembles more closely, in spirit, the Governments of Germany, Italy and Soviet Russia than in the forms of their constitutions. The President of Turkey is almost a dictator, but always with the confidence of the Kamutay. The Government of Turkey strangely resembles

1. *Foreign Affairs.*, Oct., 1933 pp. 142—144 ; also Hans Kohn—*Revolutions and Dictatorships*, 1939, pp. 257—258.

the provisional government of the Third French Republic. But if several political parties originate and prove strong in Turkey, ( which is impossible in the near future ), there can be no doubt that the Turkish Government will be a replica of the Third Republic. The power of the Turkish President is great not by virtue of the Constitution, but by virtue of the fact that he is the President of the only political Party in the country. Nevertheless he cannot dissolve the Kamutay, while the latter exercises such distinctly executive powers as the declaration of war, coining of money, the reduction of penalties, the proclamation of amnesties, the right of dissolution of itself, etc. But the Constitution of Turkey is different from those of other countries in several very important points. There is no class-war or expropriation of private property as in Soviet Russia ; there is no unrestricted private ownership (Art. 74) as in England or U.S.A. ; there is no State religion as in Italy, there is no racialism as in Germany ; there is no Senate as in France ; there are no predominant Islamic traditions as in Persia. The Constitution of Turkey, as I have said, is a 'sui generis'. It is distinctly the child of the revolutions (1918 - 1923), begotten by a leader, whose breadth of outlook and depth of vision, whose cosmopolitanism and love for 'equality, fraternity and liberty', mingled with an acute sense of realism, stand unsurpassed in the twentieth century. Turkey, to-day, has well defined frontiers, a homogeneous and contented people of 16,000,000 souls ; an excellent system of primary, secondary and higher education (the total number of students in 1936 were 544,621 males and 265,578 females). She enjoys the blessings of financial stability ; in 1938—39, her revenue was L.T. 250,019,000 and expenditure, L.T. 249,954,200. By the law of June 21, 1927, military service is compulsory. It begins at 20, the liability to serve lasting for 26 years. The period of service in the infantry is 18 months ; in cavalry, artillery and air, it is 2 years ; while in the navy, 3 years. The State owns

a number of monopolies, e.g. tobacco, alcohol, sugar, matches, explosives, cartridges and salt. In foreign relations, she has no enemy. The quarrel with Greece ended with the visit of M. Venezelos in 1930. The Balkan Pact of Feb. 9, 1934, has guaranteed the inviolability of her frontiers. The Pact of Saadabad with Iran, Iraq and Afghanistan in 1937, has stabilized the conditions in Western Asia. And all these momentous achievements have been made in the course of only fourteen years by the energy, will and resourcefulness of a man who was called by Lord Balfour "a bandit who stood for everything that was opposed to the League of Nations."

## CHAPTER II

### EGYPT

The valley of the Blue Nile has ever been the realm of never-ending political vicissitudes. When Napoleon was asked in St. Helena, what was the most important country in the world, he replied with his characteristic swiftness that it was Egypt. Whoever conquers Egypt conquers the Old World. Once the Pharaohs ruled over it and ruled the Mediterranean. Then came the Persians, the Greeks, the Romans and the Arabs, who were in their turns, the conquerors of the world. In 639 A.D. an army under Amr-Ibu-el-Ars, sent by the second Caliph Omar I, overran Egypt. From that year to 1517 when Egypt was conquered by the Ottoman Turks, the political power gradually passed into the hands of the Mamelukes, who were originally white slaves. As Young says : "This institution of what was at first a servile militia, then a military caste, and finally a ruling class, was introduced by the Saracens, when at the height of their power under Saladin, and was afterwards imitated by the Turks in their Jannissaries."<sup>1</sup> With the Turks under Suleiman the Magnificent, Egypt was governed by a Pasha, who was assisted by two Chambers (Divans) in which the Army and the Divines had representation. The country, which became an Ottoman province, was divided into twelve Sandjaks each under a Mameluke Amir. In 1770 A.D. Egypt had a short-lived independence under Ali, a Mameluke Bey, who had revolted against the Sultan of Turkey and

1. Young—*Egypt*, Modern World Series—pp. 23-24.

driven out the Pasha. But this independence vanished in 1773. In 1798, the land was occupied by the French forces under Napoleon to whom, according to Talleyrand, "L'expédition assure la destruction de la Puissance Britannique dans l'Inde." The two Divans were revived by a proclamation of December 25, 1798, while in the middle of the next year, Egypt was declared a French Protectorate. By August 1801, the French had to wind up their colonial career in Egypt, while a bitter struggle ensued between the Mamelukes and the Turks, which came to an end in 1805, by the appointment of Mehmet Ali, Commander of the Albanian regiment in Egypt, as the Pasha, by the Firman of the Sultan. Mehmet Ali ruled Egypt with an iron hand for forty-three years, crushing the Mamelukes, nationalising all lands, trade and industry. Sudan was conquered and Khartoum was founded in 1820. The Sultan, with the help of the European Powers, tried to keep the Pasha within proper limits, and by a Firman, dated February 13, 1841, he made the Pashalic of Egypt hereditary in the family of Mehmet Ali. The two Pashas who ruled Egypt from 1848 to 1854, were unimportant persons, but from July 1854 to 1863 (Jan.), Sayed Pasha did a lot of things which determined the fate of Egypt for ever. In 1856 he gave Ferdinand de Lesseps the concession for the construction of the Suez Canal and to the British the right of establishing the Bank of Egypt and the Eastern Telegraph Company. He and his successor, Ismail Pasha, recklessly went on borrowing loans in foreign markets, and giving various anti-national concessions to foreign Powers. Ismail sold 176,602 Suez Canal shares for £ 3,976,582 to the British Government in 1875, for meeting his debts, while within a very short time foreign Powers established various controlling institutions in the country for the purpose of safeguarding their financial interests. Besides these, they also enjoyed certain capitulatory rights granted by the Sultan of Turkey.

## Government of Egypt up to 1882

The Government of Egypt was an autonomous autocracy. By the Firman of 1866, Ismail Pasha got the title of the Khedive of Egypt. By the Firman the Khedive was not to increase his army to more than 30,000 men, and was bound to pay to the Sultan an annual tribute of £ 675,000. By another Firman of 1872, all military restrictions were removed, and the Khedive was given "every substantial attribute of sovereignty, except only the *jus legationis*." Externally, the Khedive was under the suzerainty of the Sultan. As an authority remarked: "Le vice-roi recoit à son avènement, l'investiture du Sultan ; il paye à la Porte un tribut annual ; il perçoit les impôts et rend la justice au nom du Sultan ; il a le droit de battre monnaie, mais seulement à l'effigie du Sultan ; enfin là nom de l'Empereur des Ottomans, et c'est là dans tous les États musulmans ce qui constitue la souveraineté supreme." In internal matters the Khedive could say: "L'État c'est moi." By the Firmans of 1841 and 1866, the throne was made hereditary by the eldest male descendant in the family of Ismail. The Khedive looked after and controlled every important affair of the State. His sovereignty was personal. The Great Council, set up by Mahomet Ali, and composed of the "dignitaires et de princes de la famille vice-royale, et qui reunissait les attributions d'un conseil d'Etat et d'une cour de cassation," like the Turkish Divan, was suppressed by Sayed Pasha in 1860. In its place was set up a Privy Council composed of the Ministers, the Sheikh-ul-Islam and three other notable functionaries of the State who accompanied the Khedive. Its function was simply to examine and report to the Khedive the work of the several departments. There were in Sayed's time only three Ministers, viz. of Foreign Affairs, War and Finance, but Ismail increased their number to eight, the five additional ministers being (1) Interior, (2) Marine, (3) Commerce, (4) Public Works and



Agriculture and (5) Public Instruction. Besides these, there were two sub-departments of Customs and Post Office.

Before we proceed to study further constitutional developments in Egypt it is necessary that we should know something of the various foreign institutions and rights which henceforth began to restrict the freedom of action of the Khedive. All of them were due to the borrowings of Ismail. In 1876 he issued a decree repudiating his personal debts of eleven million sterling, apart from a floating debt of the country amounting to 26 million sterling. This repudiation was set aside by the International Courts, "which had replaced some of the former consular jurisdictions" in Egypt<sup>1</sup>. Great Britain and France intervened with the result that dual control was set up to secure the interests of the European bond-holders. An English official began to superintend the revenue of Egypt, and a French official the expenditure of the country. Four institutions were quickly established with the same end in view, viz, (1) The Commission of Public Debt, controlled by six Commissioners, all of different nationalities, setting limits to the administrative expenditure of Egypt under the Law of Liquidation, promulgated by the Khedive, after having received the sanction of the six great Powers<sup>2</sup>; (2) The Railway Board—controlled by three members of different nationalities (the railways were internationalised, and their revenues charged to the payment of the debts); (3) The Daira Administration—i.e., of the vast estates of the Khedive, on which he had borrowed large sums (this was managed by a Board of Directors consisting of a European Director-General and two foreign Controllers representing the bond-holders); (4) The Domain Administration dealing with the properties given up by Ismail under European pressure in 1878 and on which a loan of £8,500,000

1. F. Sanderson, *Great Britain in Modern Africa* (1907), p. 27

2. A. Milner—*England in Egypt*—p. 52.

was negotiated.<sup>1</sup> Over and above these, there was the "Caisse de la Dette", another *imperium in imperio*, constituted by a Khedival Decree of May 2, 1876, consisting originally of a Frenchman, an Austrian and an Italian ; but subsequently an Englishman was added in 1877, a German and a Russian in 1885. Its original power was only to receive certain revenues especially assigned to the service of Foreign Debts, but later on it extended its power "over the execution of the complicated series of agreements—decrees, conventions, declarations, protocols—which constitute in their totality the international compact regulating the finances in Egypt."<sup>2</sup> The Commissioners of the Caisse were technically Egyptian officers, appointed by the Khedive ; but in reality they were the creatures of the Consuls-General of various Powers in Egypt. The Commission had also some legislative power within its defined jurisdiction.

Apart from these financial institutions, there were in Egypt what are known as the Capitulations, i.e., special rights acquired by the foreign Powers for their nationals under various treaties with the Sultan, e.g. special commercial privileges, immunity from personal taxation without the consent of their Governments, inviolability of domicile, protection from arbitrary arrest and exemption from the jurisdiction of the native courts. The foreign States which possessed such capitulatory rights in Egypt were : France, Italy, England, Germany, Austria, Russia, Holland, Spain, Sweden, Denmark, Belgium, Portugal, Greece, the United States and Brazil. The abuse of these capitulatory rights was extensive. Even the impartiality of the foreign judges in the Mixed Tribunals and the Consular Courts was not unimpeachable.<sup>3</sup>

1. E. W. Polson-Newman—*Great Britain in Egypt*, (1928), p. 129.

2. A. Milner—*op. cit.* p. 53.

3. For further details, see Milner—*op. cit.* Chap. IV, pp. 33-62 ; see also *Parliamentary Papers* Vol. C, 1907, Cmd. 3394, p. 637.

In 1878 Ismail Pasha thought it prudent to yield to the pressure of the foreign Powers in Egypt for a constitutional government with ministerial responsibility. To him, that was the only way of escaping from the dual control. For that purpose he issued a Rescript on August 28, 1878, in which he wrote : "Dorénavant, je veux gouverner avec et par mon Conseil de Ministres Les membres du Conseil de Ministres devront être tous solidaires les uns des autres ; ce point est essentiel." In a letter addressed to Sir Rivers Wilson on August 23, 1878, he had expressed the same idea : "J'ai chargé Nubar Pasha de me former un Ministère. Cette innovation, peut paraître de peu d'importance ; mais de cette innovation, sérieusement conçue, vous verrez sortir l'indépendance ministérielle, et ce n'est pas peu ; car cette innovation est le point de départ d'un changement de système."<sup>1</sup> In the Rescript of August 28, 1878, the Khedive promised to be bound by the decisions of the majority of his Cabinet. The chief officials of the State were to be named by the Khedive acting on the advice of his Council of Ministers. In the first Egyptian Ministry under this Rescript, Nubar Pasha was Minister of Foreign Affairs and of Justice ; Riaz Pasha of the Interior ; Sir Rivers Wilson of Finance ; M. de Bligniers of Public Works. This Rescript was called by Cromer the Magna Charta of Egypt. But it was soon violated by Ismail. Since 1867, Ismail had convoked the Assembly of the Notables only once in a year. This body was constituted of village Sheikhs elected by the Communes. It merely received and discussed the annual administration report submitted to it by the Privy Council. Its power was simply debatory. Thus Ismail was opposed not only to ministerial responsibility but also to a popular and powerful Assembly, while his lavish expenditures threatened Egyptian finances. Under these circumstances Great Britain and France requested the Sultan to intervene, as a result whereof Ismail was deposed and his son Tewfik Pasha was

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1. Quoted in *Modern Egypt*, Vol. I, p. 62, by the Earl of Cromer.

appointed Khedive by the Sultan on June 26, 1879. The Dual Control was again revived under a Decree of the Khedive Tewfik, dated November 15, 1879. Article 1 of the Decree said: "The Controllers-General shall have in financial matters the most complete powers of investigation into all the public services, including those whose receipts have a special destination by virtue of decrees and contracts. *Ministers and functionaries of every rank shall be bound to give every information and to furnish every document required by the Controllers and their agents.*" These Controllers had full control over the public services, they had the *rank of ministers* at the Council, a seat and a consultative voice as well (Art. 4). They were removable only with the consent of their respective Governments (Art. 6).<sup>1</sup> Some writers regard the establishment of this Dual Control as "the commencement of the administrative regeneration of Egypt,"<sup>2</sup> while others regard it as the illegal interference of Anglo-French money-lenders and stock exchanges with the political affairs of another country.<sup>3</sup>

In August 1879 Tewfik Pasha charged Sherif Pasha with the formation of a ministry, but when the latter proposed a constitution, the Khedive disapproved of it, and established a personal government, retaining for himself the presidency of the Council of Ministers. The British and the French Governments also supported Tewfik in his opposition to parliamentary government. Lord Cromer writes: "There can be little doubt that the Khedive acted wisely in declining the proposals submitted to him by Sherif Pasha. Any Egyptian constitution must, of necessity, at that time, have been a mere *decor de theatre.*"<sup>4</sup> The only form of government that Cromer could regard suitable for Egypt was benevolent despotism.

\*1. For the text of the Decree, see Blanchard Jerrold—*The Belgium of the East*, (1882) . pp. 64-66.

2. cf. Milner—*op. cit.*—p. 22.

3. Jerrold—*op. cit.*—p. 44.

4. Cromer—*op. cit.* Vol. I, pp. 151-152.

But the desire of the people for constitutional government was genuine and every day national agitation was acquiring larger and larger dimensions. A party, known as the "National Party" came into existence in 1875. The Minister of War, Mahmud Barody, supported it; in the army it was represented by Ahmed Araby, in the Azhar by the Sheikhs. A writer in the *Pull Mall Gazette*, December 20, 1881, remarked that the Party "have for their motto not Islam for the Mussalmans, but Egypt for the Egyptians. This is primarily a national and not a religious movement." The same writer says: "I may say with absolute certainty, that all the leading men, the Sheikhs, the mudirs (if not Turks), the various muffedishes—in fact, all the people who influence the masses—are warm supporters of the National Party."<sup>1</sup> In his letter to the *Times*, dated March 16, 1882, Sir W. H. Gregory, after exhorting the British people to support Egyptian nationalism and demand for parliamentary government said: "I believe the leader Arabi Bey to be honest and patriotic; I believe the objects of the party at present to be honest and patriotic."

On the 26th December, 1881, the Assembly of Notables was summoned under Ismail Pasha's Law of 1866, and early in 1882, Sherif Pasha and the Council of Ministers presented to it a project for the constitution of an Egyptian Parliament. This is a very important and rare document, and I propose to give here a summary of it. This draft constitution contained 52 Articles, of which the first and the second declared that all the delegates are to be elected for a term of 5 years. Arts. 3-6 guaranteed freedom of discussion and inviolability of the persons of the delegates. The Chamber was to be convoked by the Khedive annually, "after the Council of Ministers has consented to its convocation" (Art. 7). The ordinary sittings of the Chamber was to last 3 months, from January 31 to November 1 and in case

1. Quoted in *The Belgium of the East*,—*sup. cit.* p. 122.

of need, a further period of one month might be added. Art. 9 provided for extraordinary session. The Khedive was to nominate the President of the Chamber for 5 years from amongst three members chosen by the Chamber, the two Vice-Presidents being elected by the Chamber from amongst its members (Arts. 14-15). The Ministers were to have the right to participate in debates, and were bound to answer questions of the House (Arts. 19-20). Art. 21 says: "Members are jointly and severally responsible to the Chamber for every measure taken by them in Council violating existing laws and regulations," while Art. 22 added that "every Minister is individually responsible for such acts done in the exercise of his duty, and within the provisions of the preceding Article." In case of a continuance of disagreement between the Ministry and the Chamber, if the Ministry, after an interchange of arguments, does not retire, "the Khedive dissolves the Chamber and issues writs for new elections to be completed within three months, commencing from the date of dissolution" (Art. 23), while by Art. 24 "if the new Chamber confirms the vote of the old Chamber, that vote becomes decisive." By Art. 25 the Government reserved to itself all the initiative of legislation. Articles 26-28 proposed a standing legislative commission. Art. 30 says: "No new tax, direct or indirect, on realty, on personalty or on persons can be established in Egypt without a law voted by the Chamber." By Arts. 31-37, the Chamber had full rights to discuss and vote the annual budgets, subject only to Art. 34, which says that the Chamber "has no power to discuss, in any case, the service of the tribute due to the Porte, the service of the public debts or any burthen of the State arising out of the debt or out of the Law of Liquidation, or out of the conventions made between Foreign Powers and the Egyptian Government." Art. 38 gave to the Chamber the decisive voice on all contracts, treaties and concessions which involved fresh expenditures. Arts. 39-40 dealt with rights of

petition. Art. 41 empowered the Government to pass ordinances, during the recess of the Chamber, to meet urgencies, but subject to their being presented before the Chamber at its next sitting. Art. 46 fixed the quorum of the House at two-thirds of the members, but "any vote concerning Ministerial responsibility will require a majority of at least three-fourths of the members present." The Constitution provided a novel way for modifying this Organic Law, viz, "by agreement between the Chamber and the Council of Ministers" (Art. 50).

The Assembly of Notables, led by such patriotic leaders as Arabi Pasha, refused to accept this Constitution, unless it included (1) complete ministerial responsibility to the Chamber, (2) the right of discussing and voting the budget with necessary reservations, and (3) the right of initiative in all legislations to belong to the Chamber.<sup>1</sup> The Khedive and the Council of Ministers were almost ready to concede the demands of the Nationalists, but the British and especially the French Government sent a Joint Note, dated 8th January, 1882, in which they said that they "consider the maintenance of His Highness on the throne, on the terms laid down by the Sultan's Firmans, and officially recognised by the two Governments, as *alone able* to guarantee for the present and the future, the good order and development of general prosperity in Egypt in which France and Great Britain are equally interested."<sup>2</sup> The Porte protested against the Joint Note, for if there was any trouble in Egypt, he was the legal sovereign to whom matters should be brought for settlement. The British and the French Governments had no right to take the law into their own hands. But as the nationalist agitation continued unabated, the Chamber waited upon the Khedive urging him to sign the Organic

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1. For the text of the Constitution see Jerrold—*op. cit.*—pp. 231-240, Appendix VI.

2. For the text of the Joint Note see Cromer—*op. cit.*—Vol. I, p. 223.

Law. The two Powers sent another Note to the Khedive on May 25, 1882 in which they demanded (1) the temporary retirement from Egypt of Arabi Pasha, who had recently become the Minister for War, and of two other leading Nationalists, and (2) the resignation of the Ministry of Mahmud Pasha Sami—another Nationalist. The man who did Egypt most harm was Gambetta, but with the fall of his Ministry in France, the French Government backed out of the Joint Note. On September 13, 1882, Arabi's army was defeated in the battle of Tel-el-Kabir and from that day began the British occupation of Egypt. Before I go on to describe the constitution set up by the British in 1883, I should like to dispel the wrong notion current in all English books about the great Egyptian national leader Arabi Pasha. I have already given some idea of his fervent nationalism. I should like to add here only this that before he was exiled from his beloved motherland, he wrote a memorandum on Egyptian reform in November 1882 from behind the prison bars. In this memorandum he prayed for a nationalist ruler for Egypt, two Houses of the Legislature, Ministerial responsibility ("no act of the ruler was to be valid" unless countersigned by the Cabinet or special Minister whom it may concern), abolition of the foreign capitulations, a thorough reform of Egyptian judiciary, national education and dismissal of unnecessary European officials.<sup>1</sup>

### The Organic Law of 1883

In November 1882 Lord Dufferin was appointed British High Commissioner for Egypt, and was immediately invested with the task of preparing a constitution for this country. He submitted his general report to Earl Granville on February 14, 1883, in which he wrote the following: "I would press upon Her Majesty's Government a more

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1. For this interesting and revealing document see Major E. W. Polson Newman—*Great Britain in Egypt*, Appendix I, pp. 283-291.



generous policy—such a policy as is implied by the creation within certain prudent limits, of representative institutions, of municipal and communal self-government, and of a political existence untrammelled by external importunity, though aided, as it must be for a time, by sympathetic advice and assistance. Indeed no middle course is possible. The valley the Nile could not be administered with any prospect of success from London.”<sup>1</sup>

But almost simultaneously with the sending of Lord Dufferin, the British Government anxious to clear up its position in Egypt *vis-a-vis* the Sultan of Turkey made the announcement that it had no desire to subvert the legal sovereignty of the Porte in Egypt. “It is the wish of Her Majesty’s Government to recognise in its full significance the position which is secured to His Majesty the Sultan as Sovereign of Egypt by Treaties and other instruments having a force under international law.”<sup>2</sup>

In accordance with Lord Dufferin’s recommendations the Egyptian Organic Law and the Electoral Law were passed and promulgated on May 1, 1883. The former contained 54 Articles and the latter 46. The constitution of Egypt was reconstructed on the following basis.

There were provisions for village constituencies, provincial councils, two legislative bodies at the centre, and election by two degrees. In the village constituency every Egyptian, of 20 years of age or more and who had lived in the same village for three years excepting soldiers and those who suffered mental and physical disqualifications, was an elector. (Electoral Law, Arts. 1-6). Voting by ballot was prescribed ; cumulative voting was introduced on the principle of the English School Board System for the protection of the interest of the Christian minorities. General Commissions were organised for ensuring freedom and purity in

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1. Egypt, No. 6, *Par. Pap.* 1883, Vol. 83, p. 43.

2. *British and Foreign State Papers*, Vol. LXXVII, p. 131.

elections (E. L. Art. 16). Each village had the right of electing one delegate, and the delegates in their turn would elect the Provincial Councillors. The Mudir of each Province would be assisted by a Provincial Council composed of 4 to 8 members chosen by the elector-delegates in that Province. The members of the Provincial Councils were to be 30 years or over in age, know reading and writing, pay 5000 *piastres* as tax, and must not be Government servants or military men. The tenure of the Council was 6 years, half of the House being renewable every 3 years. The Mudir had the right to convoke and dissolve the Provincial Council, and could exercise considerable influence over its deliberations. The real power of these Councils lay in purely non-political local matters (Arts. 2-17, Organic Law).

For the Central Government there was first, the Legislative Council consisting of 30 members, 14 of whom were nominated by the Khedive for life. Of these 14, the President of the Council was directly nominated by the Khedive, while one of the two Vice-Presidents and 12 Councillors were nominated by him on the recommendations of the Council of Ministers. All of them were removable by a Decree "issued on the proposal of our Council of Ministers or by virtue of a resolution taken by the Legislative Council" (Art. 31). The rest, i. e. 16 members, were elected by the Provincial Councils, from amongst the members thereof, their tenure being 6 years. They were re-eligible and served gratuitously. This Council was a smaller body than the other one, and hence more highly organised and active. The nominated element was supported by Lord Dufferin as he thought that it would ensure the co-operation of experienced men and members belonging to non-Muslim communities. The powers of the Council were, however, merely debatory and consultative. It had no power of absolute veto. The service of the Tribute, Public Debt, and generally all charges and obligations resulting from the Law of Liquidation or

from International Conventions, were not allowed to be the object of any discussion or even any expression of opinion in the Council (Art. 23). But under Article 18, no Law or Decree relative to the Public Administration could be issued without having been previously laid before the Council for its advice. The Budget and all money measures, subject to Art. 23, were to be annually placed before the Council. The latter was also empowered to invite the Ministers to submit "projects de loi" on any subject (Art. 19).

The Legislative Council not being a popular body, the General Assembly supplied that need. This House was a bigger body containing 30 Councillors (i. e. members returned by the Provincial Councils), 46 members elected by the village delegates, with a mandate for 6 years, and the Ministers, whose number varied from 6 to 8. The President of the Legislative Council was the President of the Assembly. Under Art. 34, "no new tax, whether a direct tax or on land or on personalty can be established in Egypt without having been discussed and voted in the General Assembly." The Assembly had the same liberty of discussion, criticism and suggestion as the Council. But it had the additional rights to be consulted on all matters of general interest, among which public loans, large schemes of canalization or railways, the application of the "Cadastre," the imposition of fresh taxes, etc., were the most important. The Assembly must be convoked at least once in two years (Art. 39). The Khedive had the power of summoning, proroguing and dissolving the Legislature.

The Organic Law contained two other Articles of great importance ; one, establishing ministerial responsibility, and the other providing for settlement of constitutional disputes. Art. 52 says : "Aucune Loi, aucun Decret ne sera promulgué sans avoir été contresigné par le President du conseil du Ministres et les Ministres competents", while Art. 52

provided that all questions as to the proper interpretation of an Article of the Constitution would be finally decided by a Commission composed of two Ministers, of whom one will be that of Justice ; two members of the Legislative Council ; and three Judges of the Court of Appeal in Cairo, under the presidency of the Minister of Justice.<sup>1</sup>

The Constitution also provided for a Council of State, whose organisation and functions were to be explained in a subsequent Decree. This institution was borrowed from France. Sir Evelyn Baring (afterwards Lord Cromer), who became Consul-General of Egypt in January, 1884, regarded it as useless and expensive and "a cover for international interference in every branch of the Egyptian Government." Hence it was not established.<sup>2</sup> The Constitution as a whole was simply a reproduction of Sherif Pasha's project before the British occupation, with, of course, minor alterations. Neither the demand of the Egyptian Chamber of 1881 nor the hopes of Arabi as expressed in his memorandum were fulfilled. The Organic Law, as Lord Dufferin pointed out in his General Report for 1883, did not "really embody the Parliamentary principle in the true acceptance of the term," but, as he added, "the arrangements proposed for Egypt are a far more bold and generous move in the direction of self-government than anything the most revolutionary Indian statesman has hitherto dared to suggest for that country."<sup>3</sup>

From 1883 to 1913 this Organic Law continued to be the basis of the Egyptian Government. But it tells us nothing about the powers of the Khedive, the British Consul-General, the European officials or the Egyptian Judiciary. Light on these matters is thrown by other sources.

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1. *Par. Pap.*, Egypt, no. 19 (1833).

2. Cromer—*Modern Egypt*, Vol. II, p. 273.

3. *Par. Pap.*—Egypt, no. 6 (1833), p. 49.

The Sultan continued to be the sovereign of Egypt. On October 24, 1885, the position of the Sultan was clarified by an Anglo-Turkish Convention. The Sultan recognised the British intervention but not sovereignty in Egypt. Art. 4 of the Convention laid down that all proposals initiated by the Khedive or by the British for modification of the administrative system were to be bound "by the limits of the Imperial Firmans." Art. 5 stipulated that "the international engagements contracted by His Highness the Khedive will be approved by the other Government in so far as they shall not be contrary to the privileges granted by Imperial Firmans." Art. 6 provided for the withdrawal of British troops from Egypt, the proper time for such withdrawal to be determined jointly by Turkey and England.<sup>1</sup> Another Anglo-Turkish Convention was really signed, though not ratified, in 1887, by which the Government of Egypt was to be supervised by two Commissioners, one English, another Ottoman, for a period of three years, after which the British military occupation was to come to an end, subject to the condition that Great Britain would re-occupy Egypt if there was in that country any internal or external danger threatening British interests.<sup>2</sup> Turkey refused to ratify this Convention; and Great Britain refused to evacuate, quite contrary to her earlier declaration of January 3, 1883.

Nevertheless the British Government continued to recognise the Sultan as the legal sovereign of Egypt. The powers of the Sultan were restated in the Firman of 1892. All Egyptians were Ottoman subjects; the taxes were levied in the name of the Sultan. The Khedive had no right to make political treaties or to represent Egypt in international conferences: but he could sign commercial conventions with foreign States. The Khedive could not abandon to a third

1. *British and Foreign State Papers*—Vol. LXXVI, pp. 442-4.

2. *British and Foreign State Paper*—Vol. LXXVIII, 1080, 1096.

party any of the territorial rights of the Sultan in Egypt. The Egyptian army was not to exceed a force of 18,000 men. The Ottoman flag was the Egyptian flag. All military ranks above the Colonel could be conferred only by the Sultan. The coinage was to be in the name of the Sultan while the Khedive was to pay him an annual tribute of £ 682,000.

So far as the constitutional position of the Khedive was concerned, he continued to be the chief *de jure* executive of the State, having power of summoning, proroguing and dissolving the Legislature. The Ministers were nominally appointed by him, but in reality in accordance with the wishes of the British Consul-General. As early as January 3, 1883, Lord Granville, in his despatch to the Great Powers explaining the British position in Egypt, had said : '...the position in which Her Majesty's Government are placed towards His Highness imposes upon them *the duty of giving advice with the object of securing* that the order of things to be established shall be of a satisfactory character, and possess the elements of stability and progress."<sup>1</sup> Hence, with British occupation, the personal government of the Khedive vanished. There were seven Departments, viz., of Foreign Affairs, Finance, Justice, War, Public Works, Education and the Interior, each with a Minister who was not always an Egyptian. The Post Office, the Customs and the Light Houses were under the Department of Finance, while the Interior included the Sanitary Department and the Prisons. There was a separate Director-General for the administration of the Wakf, taking his orders directly from the Khedive. The proceedings of the Council of Ministers were in Arabic and French. The Ministers were assisted by subordinate European officials whose opinion they could not easily ignore. But as Lord Lloyd remarks, "the Council of Ministers

1. A. Milner—*op. cit.*—pp. 26-27.

was the Khedive's advisory council, and the Khedive was the Government fulfilling *de jure* all the functions of Governmental authority."<sup>1</sup> Therefore, it is quite clear that real power lay not in the hands of the Khedive or of the Ministers, but in the British Consul-General. This concentration of power was absolutely illegal as there was no written law which could support it ; rather it was contrary to the Anglo-Turkish Conventions of 1885 and 1887 and the open declaration of Lord Granville. Hence the British Government felt it necessary to strengthen their position in Egypt, not simply by armed force, but also by international treaties perpetuating their occupation of the country. The Anglo-French declaration, which was signed on April 8, 1904, contained the following : "His Britannic Majesty's Government declare that they have *no intention of altering the political status of Egypt*. The Government of the French Republic for their part, declare that they will not obstruct the action of Great Britain in that country by asking that *a limit of time be fixed for the British occupation or in any other manner*." (Art. 1). The next Article laid down similar British obligation with regard to French Morocco, while the last Article (Art. 9) contained the following : "The two Governments agree to afford one another their *diplomatic support* in order to obtain the execution of the clauses of the present Declaration regarding Egypt and Morocco."<sup>2</sup> This declaration was subsequently approved by Germany, Italy and Austria.

Of the European officials in the service of the Khedive something must be said. In the Egyptian army, the Commander-in-chief and most of the superior officers, whether departmental or regimental, were British. In the civil service, a large number of Europeans were employed with considerable powers and salaries. There was the

1. Lord Lloyd - *Egypt Since Cromer*, Vol. I, p. 17.

2. *Par. Pap.* Vol. 103 of 1905, pp. 264-284 ; Cind. 2384.

British Financial Adviser, appointed after the Arabi revolt, who had the power to be present at all Cabinet meetings. He was to advise on all important financial matters, and often guided the Ministers on non-financial matters as well. He used to keep the British Consul-General informed of all that was going on in ministerial circles. There was again the British Judicial Adviser, invested with power to promote the administration of justice. The posts of the Under-Secretary in the Public Works Department, the Financial Secretary, the Director-General of Post-Offices, the Inspector-General of Police (subsequently, the Adviser to the Inspector), were also held by Englishmen. In the Railway Administration the Egyptians had little voice before 1906.

From 1883 to 1913, Egypt had very few political events of note. In the Sudan, there was a general rising under Mohammed Ahmed, whom people called the Mahdi, and this resulted in the massacre of the British forces under General Gordon in 1885. But the Sudan was re-conquered in 1898 by a combined Egyptian and British force. On January 19, 1899, the Anglo-Egyptian Convention was signed, and this established the claim of Great Britain, "by right of conquest" to share with Egypt in the administration of the Sudan. Though both British and Egyptian flags were to fly on Sudanese territory, yet the supreme civil and military command in the Sudan was to be vested in a "Governor-General of the Sudan" to be appointed by the Khedive "on the recommendation of Her Britannic Majesty's Government" and removable "only by Khedival Decree, with the consent of Her Britannic Majesty's Government" (Art. 3). The Governor-General was empowered to govern the Sudan by Proclamations. Egyptian laws were to have henceforth no application in the Sudan (Art. 5), and mixed Tribunals were not allowed to extend their jurisdiction in any part of the Sudan (Art. 8).<sup>1</sup> In January 1892, Khedive Tewfik was

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1. *British and Foreign State Papers*, Vol. XCI, p. 19



succeeded by his son Abbas Hilmi. On April 8, 1904, was signed the Anglo-French Declaration regarding Egypt and Morocco, to which we have already made a reference. In 1905, Egypt gained financial autonomy in so far as the powers of the *Caisse de la Debt* decreased. On October 1, 1906, the Turco-Egyptian frontiers were settled by a Joint Commission, and Egypt got the Sinai Peninsula near the Gulf of Akaba.<sup>1</sup> In 1907 Cromer resigned and Gorst became the new Agent and Consul-General in Egypt. Lord Cromer in his last Report (1906) foresaw the growth of a strong nationalist movement, but he tried to discourage it. He said: "Egyptian nationalism is a plant of exotic rather than of indigenous growth."<sup>2</sup> The Egyptian National Assembly passed the following resolution in 1906: "That the Egyptians be granted a constitution and that, as a temporary measure, the powers of the Provincial Councils, the Legislative Council and the General Assembly be increased."<sup>3</sup> The Nationalist Party went further and demanded (1) Parliamentary Government with ministerial responsibility, (2) complete control of the finances of the country, and (3) employment of Egyptians in the higher administrative posts hitherto held by the Europeans. To the first demand Cromer replied that it would lead to chaos, to the second that it would lead to national bankruptcy, and to the third, that it would lead to bribery and corruption. Sir Eldon Gorst gave some powers to the Provincial Councils in June, 1908, to control and promote education and discuss local affairs. In that same year the Legislative Council passed a resolution demanding "effective participation with the Government in the internal administration of the country and national control of finance." In 1910, the pro-British Prime Minister was assassinated. The Government took strong measures and did not convoke

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1. *Cmd.* 3394 of 1907; *Par. Pap.* Vol. C., p. 617.

2. *Cmd.* 3394 of 1907, pp. 627, 631.

3. *Cmd.* 3451 of 1907, p. 4.

the Assembly. Inspired by the Turkish Revolution of 1909 the students in thousands and the press agitated for self-government. In 1911 Lord Kitchener became the Consul-General. He prevented Egypt from helping her suzerain in the Turco-Italian war of 1911. This created anti-Christian feelings in the country. There was deep discontent, and to placate the public, the Government passed the Organic Law of 1913, repealing that of 1883.

### The Organic Law of 1913

The new Constitutional Law of July 21, 1913, combined the two Houses, the Legislative Council and the General Assembly into one, viz. the Legislative Assembly, composed of 89 members of whom six were ministers and ex-officio members, 66 were elected in the second degree and 17 nominated, thus assuring a higher proportion of elected to nominated members. Of the 17 nominated members, 4 were to be Copts, 3 Arab Bedouins, 2 businessmen, 2 medical men, 1 engineer, 1 representative of general or religious education, 1 municipal representative, 1 President of the Assembly and 1 its Vice-President. This system of functional and religious representation was regarded by Lord Kitchener as a definite improvement upon the previous system. Under Art. 4. the tenure of all the members was fixed at 6 years, one-third renewable every two years, thus introducing fresh elements and establishing a closer contact with the people. Under Art. 8, the dissolution of the Assembly was to be effected by a Khedival Decree issued "at the instance of our Council of Ministers." The Assembly possessed the right of discussing *thrice* all laws that referred to the internal affairs of Egypt and all Decrees regulating matters of public administration, subject to Art. 20. Over new taxes the Assembly had absolute power. Art. 17 declared: "No new direct tax, land tax or personal tax shall be imposed in Egypt without having been *discussed and voted* by the Legislative Assembly." The other subjects over which the Assembly had the right

of discussion were the same as in Art. 35 of the old Law. To the subjects which the Assembly could not discuss and vote under the old law, viz., Tributes, Public Debts, etc., was added the Khedive's Civil List (Art. 20). The Assembly was to meet annually on November 1, the session lasting till the end of May. The Khedive could summon it at any time for special reasons. Art. 25 recognised the right of every Egyptian to address petitions to the Khedive. The Articles dealing with Provincial Councils (Arts. 35-50) were a mere repetition of the provision of Articles 2-17 of the old Law, as amended by Law No. 22 of 1909. Only the following changes were introduced: Each of the Provincial Councils would be composed of two representatives from each Markaz of the Mudira, elected by the elector-delegates of the villages in the Markaz, of which one representative would retire every two years. The life of the Provincial Council was fixed at four, instead of six years, while its powers were as of old. The Commission of Interpretation remained the same as under Art. 52 of the old Law. Only it was specified that the Minister to be nominated by the Cabinet must be other than that of Justice; the two members of the former Legislative Council would be those of the new Assembly, and the three judges would be the President, the Vice-President and the Senior Judge of the Native Court of Appeal.

The franchise qualifications were the same as before. The Electoral Law provided for one elector-delegate for every 50 electors in a village. Art. 13 of the Electoral Law made the delegate more responsible to the electors than before, by providing for his recall at any time by a majority vote of the 50 electors. An elector-delegate must be 30 years of age and on the list of electors, while a member of the Assembly must be 35 years of age and have certain educational and property qualifications. The country was to be divided into single member constituencies, while the election of the members of the Assembly was to be by absolute majority

of votes (thus necessitating a second ballot) instead of relative majority as of old (Art. 40).<sup>1</sup> It will be found that though the powers of the Assembly were increased to a certain extent in the matter of new taxation and general discussion, it was far from being a sovereign body. There was no ministerial responsibility, no parliamentary sovereignty in Egypt under this Law of 1913. The Khedive continued to be as irresponsible as before. The Prime Minister, Mohamed Pasha, who was responsible for this Law, incurred the displeasure of the Khedive (who disliked this constitution thoroughly) and had to resign. The British Consul-General remained as powerful as ever.

### The War and the Protectorate

The new Legislative Assembly of Egypt, under the Organic Law of July 21, 1913, met only once in 1914, but with the outbreak of the War, it was prorogued on October 8 for two months, and after that period was over, it was adjourned *sine die*. Lord Kitchener went to England where he became Secretary of State for War, while the Khedive sailed for Constantinople and tried to put Egypt on the side of the Sultan. The Egyptian Cabinet led by Rushdi Pasha, and induced by the British Consul-General Sir Henry McMahon, took a decision on August 5, 1914, to defend Egypt against "the Government at war with His Britannic Majesty." Martial Law was declared on November 2, 1914. Turkey entered the War on the side of Germany on November 7, 1914. On the same day, John Maxwell, the Commander-in-Chief of the British forces in Egypt, extended the application of the decision of August 5, 1914, to Turkey. The British Government, in order to avoid the issue of divided allegiance, declared Egypt to be a Protectorate of Great Britain by the following proclamation of December 18, 1914: "His Britannic

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1. For the texts of the Organic Law and the Electoral Law of 1913, see *Cmd.* 6875 and *Cmd.* 6878 of 1913.

Majesty's Secretary of State for Foreign Affairs gives notice that in view of the state of war arising out of the action of Turkey, Egypt is placed under the protection of His Majesty and will henceforth constitute a British Protectorate. The suzerainty of Turkey over Egypt is thus terminated, and His Majesty's Government will adopt all measures for the defence of Egypt and protect its inhabitants and interests."<sup>1</sup> On the next day, the British Government issued another proclamation in which they deposed the Khedive Abbas Hilmi Pasha for "adhering to the King's enemies", and made Prince Hussein Kamel Pasha, the eldest living prince in the family of Mahomet Ali and second son of Ismail Pasha, the Sultan of Egypt. Simultaneously a letter was addressed by the British representative at Cairo to the new Sultan informing him that Great Britain had accepted full responsibility for the defence and protection of His Highness's territories and subjects and that all restrictions upon the numbers and organisation of the Egyptian army had been removed; but it added that Egyptian foreign relations would be henceforth conducted by His Majesty's representative at Cairo. The letter also indicated that the capitulations would be revised at the end of the War.<sup>2</sup> The explanatory Note addressed to Sultan Hussein contained these lines: "From the facts set out it results that the rights over the Egyptian Executive, whether of the Sultan or of the Khedive, are forfeited to His Majesty." Commenting on this Lord Lloyd remarked: "Possessing now both the rights of the suzerain power and the rights of the *de jure* ruler, we had a basis from which we might legally proceed to make any change we pleased in the constitution." Both the British Government and Lord Lloyd completely forgot the Anglo-French Declaration of April, 8 1904. Even

1 *British and Foreign State Papers*, Vol. CIX (1915), p. 437.

2. For the texts of the Proclamation and the letter of December 19, 1914, see Lord Lloyd—*op. cit.* Vol. 1. Appendix B, pp. 376-379; also *British and Foreign State Papers*—Vol. CIX (1915), p. 437.

the Earl of Cromer had, as early as 1906, regarded the declaration of Egypt as a British Protectorate impossible.<sup>1</sup>

However, after placing Sultan Hussein—a loyal and Anglo-phile Sultan who actually suggested the British annexation of Egypt<sup>2</sup>—on the throne, the British Government proceeded to make Egypt the base of their military operations in the East. In 1916 Sir Reginald Wingate, who had been for the last seventeen years Sirdar and Governor-General of the Sudan, was appointed High Commissioner for Egypt. On October 9, 1917, Sultan Hussein died, but a day before his death, his son, Prince Kemal-ed-Din had, by a letter addressed to his father, renounced his claim to the throne. Ahmed Fuad, Ismail Pasha's third son, "was hastily chosen by the British Government to succeed" Sultan Hussein, for, the right "to decide questions affecting the succession to the Egyptian throne belonged to the British Government by virtue of their assumption of rights previously exercised by Turkey."<sup>3</sup> Throughout 1917, there were violent agitations everywhere in Egypt for national self-determination. The people had suffered much through (1) recruiting for the Egyptian Labour and Camel Transport Corps, (2) the requisition of domestic animals and cereals for war use, and (3) forced collections for the Red Cross Fund. The hopes raised by the public announcements of President Wilson and the Anglo-French Declaration of November 7, 1918, which promised "complete and definitive enfranchisement of the peoples liberated from Turkish oppression" in Syria and Mesopotamia, emboldened Rushdi Pasha, the Egyptian Premier, to attempt a solution of the Anglo-Egyptian constitutional problem. A special Commission to report on constitutional reform in Egypt was appointed at the beginning of 1918. Sir William Brunyate, the Acting Judicial Adviser,

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1. *Cmd.* 3394 of 1907, p. 12.

2. Lloyd—*op. cit.* Vol. 1, p. 257.

3. Valentine Chirol—*The Egyptian Problem* (1920), p. 133.

was requested by this Commission to draw up a confidential Note to serve as a basis for their discussion. The contents of the Note leaked out. There was to be a bicameral legislature, in which the Upper Chamber was to contain Egyptian Ministers, British Advisers and representatives of foreign communities, elected by special electorates. The Lower Chamber was to be elected on a popular basis as before. But the Upper Chamber was to be given a preponderating voice, while a certification power was kept reserved in the hands of the Government to be exercised only with the approval of the British Secretary of State for Foreign Affairs.<sup>1</sup> This Note was shown to Rushdi Pasha, and as the Milner Commission's Report says, "a storm of protest was aroused by a project which was interpreted as assigning only consultative functions to an Egyptian Legislative Assembly while bestowing all legislative power on a Senate in which the officially-nominated members and a group of elected foreigners would constitute the majority."<sup>2</sup>

After the Armistice the British Government refused permission to the Egyptian Prime Minister, as well as to the Egyptian Nationalist Committee, led by Zaglul Pasha, to proceed to London to place their case before them, while Egypt's claim to be present at the Peace Conference was also turned down. As a result violent disturbances and open rebellion broke out in the country. Rushdi Pasha resigned. Lord Allenby succeeded Sir R. Wingate and tried to restore peace by both strong and conciliatory measures. The ban on Zaglul who had been deported to Malta was removed. The British Government sent a Mission to Egypt, known as the Milner Mission "to enquire into the causes of the late disorders in Egypt and to report on the existing situation in the country and the form of the constitution which, *under the Protectorate*, will be best calculated to promote its peace and

1. For details of Brunayate Note, see Lloyd—*op. cit.* Vol 1, p. 277.

2. *Cmd.* 1131 of 1921 ; *Par. Pap.*, Vol. 42 (1921), p. 641.

prosperity, the progressive development of self-governing institutions and the protection of foreign interests.”<sup>1</sup> The Commission arrived at Cairo on the 7th December, 1919, was thoroughly boycotted, and left the country in March 1920. However, it came to the following conclusions: (1) “no settlement could be satisfactory which was simply imposed by Great Britain upon Egypt, but it would be wiser to seek a solution by means of a bilateral agreement—a Treaty—between the two countries”; (2) “the Treaty should not be allowed to come into force unless it had been approved by a genuinely representative Egyptian Assembly...a popularly elected body, deliberating with perfect freedom and taking its decision without official or other pressure of any kind”; (3) “Egypt, in return for Great Britain’s undertaking to defend her integrity and independence, would agree to be guided by Great Britain in her foreign relations”; (4) “in order to protect her special interest in Egypt—the safety of her Imperial communications—Great Britain was to have the right to maintain a military force on Egyptian soil”; (5) “for the protection of all legitimate foreign interests, she was to have a certain measure of control over Egyptian legislation and administration, as far as they affected foreigners”; (6) Great Britain would try to “confine the special privileges enjoyed by foreigners under the capitulations within more reasonable limits and by so doing to make Egypt much more the mistress in her own house than she is to-day”; (7) “it should be the aim of British policy to relieve Egypt from any financial responsibility for the Sudan and to establish the relations of the two countries for the future upon a basis which will secure the independent development of the Sudan while safeguarding the vital interests of Egypt in the waters of the Nile.”<sup>2</sup>

1. *The Milner Report—Cmd. 1131* of 1921.

2. *Cmd. 1131* of 1921, pp. 19, 21, 34.



While in London Lord Milner met Zaglul Pasha who was invited there to place his views before the Mission. The conversations ended in what is known as the Milner-Zaglul Agreement (an outline, on the basis of which an agreement was thought possible). The document was handed over to Adli Pasha, the Egyptian Premier, by Lord Milner, to elicit an expression of Egyptian public opinion. It consisted of eleven Articles of which Article 3 (i) declared that Great Britain would recognise "the independence of Egypt as a constitutional monarchy with representative institutions and Egypt will confer upon Great Britain such rights as are necessary to safeguard her special interests and to enable her to furnish the guarantees which must be given to foreign powers to secure the relinquishment of their Capitulatory rights." Art. 3 (ii) laid down that by the same Treaty an alliance would be concluded between Great Britain and Egypt, the former undertaking to support Egypt in defending the integrity of her territory, while Egypt "*will undertake, in case of war, even when the integrity of Egypt is not affected,* to render to Great Britain all the assistance in her power, within her own borders, including the use of her harbours, aerodromes and means of communication for military purposes." The fourth Article contained the following provisions: (1) Egypt would not adopt any attitude or "enter into any agreement with a Foreign Power which is prejudicial to British interests"; (2) Great Britain would have "a right to maintain a military force on Egyptian soil for the protection of her Imperial communications"; (3 & 4) Egypt would appoint a British Financial Adviser, and "an official in the Ministry of Justice", having the right of access to Ministers, "in concurrence with His Majesty's Government"; (5) Great Britain was to have additional powers to "prevent the application to foreigners of any Egyptian law, now requiring foreign consent"; (6) the British representative at Cairo would be "accorded

an exceptional position in Egypt and will be entitled to precedence over all other representatives"; (7) the Egyptian Government was empowered to terminate the services of British and other foreign officers and administrative officials "within two years after the coming into force of this Treaty." Art. 5 required that the Treaty must be approved by an Egyptian Constituent Assembly, but that "it will not come into force until after the agreement with foreign Powers for the closing of their Consular Courts and the decrees for the reorganisation of the Mixed Tribunals have come into force." Art. 6 contained this important provision: "This Constituent Assembly will also be charged with the duty of framing a new Organic Statute, in accordance with the provisions of which the Government of Egypt will in future be conducted. *This Statute will embody provisions for the Ministers being responsible to the Legislature*". Arts. 7, 8 and 10 dealt with the necessary reorganisations for modifying the capitulatory regime. Art. 8 (b) provided that "Egyptian nationality law will be founded on the *jus sanguinis* so that the children born in Egypt of a foreigner will enjoy the nationality of their fathers and will not be claimed as Egyptian subjects". By Article 11, Great Britain was to "support an application by Egypt for admission as a member of the League of Nations".<sup>1</sup>

Zaglul, after discussing the memorandum with the leaders of the country, informed Lord Milner in October 1920 that his party would not accept the memorandum, if (1) the functions of the Financial and Judicial Advisers were not strictly limited; (2) if the coming into force of the Treaty be made dependent upon the previous conclusion of agreements with capitulatory powers, as provided in Art. 5; (3) if the Protectorate was not formally abolished; (4) if the number of British troops was not limited and the plan for their

1. *Cmd.* 1131 of 1921, pp. 39-41.

location was not confined only to the Suez canal zone ; and lastly, (5) if Egypt was not allowed an equal share with Great Britain in the administration of the Sudan. Lord Milner saw no way to accept these modifications, the negotiations failed, and he submitted his report to the Secretary of State on December, 9, 1920.

In November 1921 Adly Pasha went to England. But as Valentine Chirol points out, "Mr. Lloyd George, mainly at Mr. Winston Churchill's instigation, threw the Milner report overboard, contending that the Cabinet had never considered itself bound by it"<sup>1</sup> Afterwards the British Government agreed to regard the Report as the basis of all discussions. Lord Curzon issued a Memorandum containing the terms of the draft treaty which he had discussed with Adly. Its major provisions were these : The Protectorate would be formally abolished ; but while maintaining the *status quo* of the Condominium in the Sudan, it was laid down that the Egyptian army in the Sudan would be under the Governor-General. Adly, however, strongly urged the "incontestable right of Egypt to sovereignty over the Sudan," and he wanted a definite location of British troops in Egypt.<sup>2</sup> The British Government sent a Note to the Sultan on December 3, 1921, warning him that after the rejection of the draft proposals they could not "hold out any prospect of reconsideration of the principle on which they were framed." Adly resigned the same day. On December 11, 1921, Lord Allenby (High Commissioner from 1919 to 1925), relying on a memorandum submitted to him by the British Advisers to the Egyptian Government, telegraphed to Lord Curzon the following : "I must ask your lordship and His Majesty's Government to believe me when I state the fact that no Egyptian, on matter what his personal opinions may be, can 'sign any

1. *The Quarterly Review*, January, 1925, p. 145.

2. *Cmd.* 1617 of 1921.

instrument which in his view is *incompatible with complete independence*. Consequently it is necessary to abandon definitely the idea that the Egyptian question can be settled by means of a treaty. His Majesty's Government, therefore, *must renounce the hope of obtaining the advantages* to be derived from a treaty in return for concessions which they may make to Egyptians."<sup>1</sup>

The British Government hesitated. Political agitation in Egypt took violent forms. The High Commissioner prohibited Zaglul from participating in politics, and when the latter violated the order, he was arrested and deported to Secheylles. For two months various telegraphic communications passed between Lord Allenby and Lord Curzon as to the best method for the solution of the Egyptian problem. Lord Allenby pointed out to Lord Curzon that the end of the policy pursued by the British Government in Egypt was bound to be "either annexation of a violently hostile country which would require to be governed by force or else complete capitulation." At last, on February 21, 1922, Lord Curzon sent the following two documents to Lord Allenby: (1) "A Declaration, which His Majesty's Government will invite Parliament to approve, terminating Protectorate over Egypt" and (2) "A Letter which your lordship should address to the Sultan when communicating to His Highness the above declaration." On February 28, 1922, the Declaration was made public. It ran thus:

"Whereas His Majesty's Government, in accordance with their declared intentions, desire forthwith to recognise Egypt as an independent Sovereign State; and whereas relations between His Majesty's Government and Egypt are of vital interest to the British Empire; the following principles are hereby declared:

1. The British Protectorate over Egypt is terminated,

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1. *Cmd.* 1592; *Par. Pap.*, Vol. 23 of 1922, p. 33.

and Egypt is declared to be an independent Sovereign State.

2. So soon as the Government of His Highness shall pass an Act of Indemnity with application to all inhabitants of Egypt, martial law as proclaimed on November 2, 1914, shall be withdrawn.

3. The following matters are *absolutely reserved* to the discretion of His Majesty's Government until such time as it may be possible, by free discussion and friendly accommodation on both sides, to conclude agreements in regard thereto between His Majesty's Government and the Government of Egypt :—

- (a) The security of the communications of the British Empire in Egypt.
- (b) The defence of Egypt against all foreign aggression or interference, direct or indirect.
- (c) The protection of foreign interests in Egypt and the protection of minorities.
- (d) The Sudan.

Pending the conclusion of such agreements, the *status quo* in all these matters shall remain intact.<sup>1</sup>

The letter to the Sultan, which accompanied the Declaration, explained the reservations. They were claimed by Great Britain "out of consideration for her own security in face of a situation which demands great prudence on her part, particularly in the matter of disposition of her troops". The ninth paragraph of the letter allowed Egypt the right of re-establishing forthwith a Ministry of Foreign Affairs, while the tenth contained the following: "The creation of a Parliament with a right to control the policy and administration of a constitutionally responsible government is a matter for your Highness and the Egyptian people to determine."<sup>2</sup>

1. *Cmd.* 1592 of 1922.

2. *Cmd.* 1592 of 1922.

The next day, March 1, Egypt was declared an independent<sup>1</sup> sovereign State and Sultan Fuad took the title of King. From that day to April 20, 1923, there was in Egypt no British Protectorate, no Egyptian constitution but only the Martial Law of November 2, 1914 and the personal rule of King Fuad. On March 15, 1922, Lord Curzon sent a circular despatch by telegraph to His Majesty's representatives abroad, which contained *inter alia* the following: The termination of the British Protectorate over Egypt involves, however, no change in the *status quo* as regards the position of the Powers in Egypt itself. The welfare and integrity of Egypt are necessary to the peace and safety of the British Empire, which will therefore always maintain as an essential British interest the special relations between itself and Egypt long recognised by other Governments. These special relations are defined in the declaration recognising Egypt as an independent sovereign State. His Majesty's Government have laid then down as matters in which the rights and interests of the British Empire are vitally involved and will not admit them to be questioned or discussed by any other Power. In pursuance of this principle, they will regard as an unfriendly act any attempt at interference in the affairs of Egypt by another Power, and they will consider any aggression against the territory of Egypt as an act to be repelled with all the means at their command."<sup>1</sup> It appears therefore quite clear that even after the declaration of her independence, Egypt was not a sovereign State. She had no control over her foreign affairs; in her internal affairs she was subject to British supervision under clause 3 (c) of the Declaration. She had no control over the Sudan; and lastly, she had no other option but to tolerate the existence of an alien army on her soil. She was, therefore, still a Protectorate, a vassal or a

1. *Cmd.* 1617 of 1922. *Par. Pap.* Vol. XXIII of 1923, pp—58-59.

'client State. According to T. J. Lawrence, "all those international persons who are obliged to surrender habitually" or "by long continued custom or by the terms of some formal agreements, or by both", the conduct of their external affairs "to some authority external to themselves", are client states, and not sovereign.<sup>1</sup> And we shall find further evidence even after the promulgation of the constitution of 1923, that Egypt was not, and even now is not, truly a sovereign State.

However, Sarwat Pasha, the first Prime Minister of Egypt after the Declaration of 1922, soon began to feel his precarious position. King Fuad refused to accept constitutional monarchy and demanded the ascription of the title of the "King of Egypt and the Sudan" to himself. On April 3, 1922 a special committee composed of 30 Liberals was set up for drafting a constitution. There were vital differences between the King and Sarwat Pasha over its drafting and the distribution of the sovereign power. Sarwat fell from power on November 29, 1922. Tewfik Nessim formed a new ministry, but he could not hold for long against the King. In February 1923, the British High Commissioner acquainted King Fuad with the displeasure of the British Government at the delays in introducing constitutional government, and warned him that if he did not withdraw immediately his claim to be styled King of the Sudan, the British Government would "review at once and radically their recent declaration of Egyptian policy." It must be remembered that the declaration of 1922 was unilateral. Hence, as Egypt was not bound by it, similarly the British Government was always at liberty to review and even to withdraw it. However, the warning had its effect, and as Lord Lloyd remarks: "the King's brief moment of autocratic triumph ended with the

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1. T. J. Lawrence—*The Principles of International Law*, 7th Edition, p. 57.

acceptance of this ultimatum. He bowed to the inevitable and invited Adly Pasha to form a ministry."<sup>1</sup> But Adly demanded the suspension of the Martial Law of 1914, which was still in force, as a condition precedent to his acceptance of ministry. The High Commissioner opposed this, and the King had to depend on Yehia Pasha, who formed a ministry in March, 1923. On 24th of the same month, Zaglul, who was deported in January, 1921, was unconditionally released. The drafting of the constitution was ready. It was soon revised by a Government committee and promulgated on April 19, 1923. The electoral law was promulgated ten days later on April 29, 1923, and the general elections were held in January, 1924. Zaglul's followers swept the polls, capturing 188 seats out of 215. Yehia Pasha resigned, and on March 15, 1924, when the first Parliament was opened, Zaglul formed the first Wafdist Cabinet under the new Constitution. We shall not discuss here the details of this Constitution, which will be done later on. Here let it be said only that though this Constitution is literally a very liberal document, promising to promote responsible government, yet in practice it has failed totally. Egypt has suffered monarchical autocracy, suspension of Parliament and even of the Constitution, and dictatorship by the leaders of minority parties. This has been so only because of the conflict in Egyptian politics of three interests absolutely antagonistic to each other. They are : (1) the British interests in Egypt, (2) the desire of King Fuad to effectively increase his personal prerogatives and to extend them whenever possible ; and lastly, (3) the predominance of the radically nationalist Wafdists. The first of these being the most important, I would like to give here a very brief review of the various British attempts to secure imperial interests in Egypt by a suitable treaty, and their effects on the evolution of responsible government in Egypt.

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1, *Egypt Since Cromer*, Vol. II, p. 73.



We have already noticed that the Declaration of 1922 was made subject to certain reservations, viz., the security of the communications of the British Empire ; the defence of Egypt against all foreign aggression or foreign interference, direct or indirect ; the protection of foreign interests in Egypt and the protection of minorities ; and lastly, the Sudan. The British Government was to retain its full control over these reserved subjects so long as agreements were not concluded in regard thereto between the two countries. From the very beginning of 1924, the British Government again tried ( the first attempt was made in the Zaglul-Milner agreement of 1920 ; the second in the Curzon-Adly discussion followed by a draft treaty in November, 1921 ) to conclude a treaty with Egypt settling these points. But so long as a treaty harmonizing Egyptian independence "with her own interests, which took precedence", was not signed, Great Britain "through the medium of the reserved points retained the right and possibility of perpetual intervention in Egypt's domestic affairs, especially since the interpretation lay in her own hands".<sup>1</sup> The first British intervention came when King Fuad tried to call himself "King of Egypt and the Sudan". The British Government threatened to revise radically their recent Declaration and King Fuad had to go without that title. Her second intervention was when Adly Pasha wanted to suspend the Martial Law. The British Government declared that before the Martial Law was withdrawn an Indemnity Act must be passed. And that was done ( July 5, 1923 ). The Act was declared to be "an integral part of an agreement entered into with the Government of His Britannic Majesty". As a result of its passing, there was withdrawn "completely and definitely from the competence of Egyptian courts all claims, direct and indirect, in

1. Hans Kohn—*Nationalism and Imperialism in the Hither East* (1932). pp. 77—81,

respect of the acts, results and consequences of British Martial Law from November 2, 1914 to July 5, 1923.<sup>1</sup>

In 1924 fresh negotiations were started between Zaglul and Mr. Ramsay Macdonald, the Labour Premier ; but as Zaglul wanted (1) the withdrawal of the British forces from the Egyptian soil, and of the British judicial and financial advisers, (2) the abandonment of British claims for the protection of the foreigners and the minorities, (3) complete freedom of Egypt in foreign relations, and (4) the reduction of the status of the British High Commissioner to that of the representatives of other foreign Powers,—the negotiations failed. Mr. Macdonald in a despatch to the High Commissioner on October 7, 1924, declared that the British control over the Suez Canal was “the foundation on which the entire defensive strategy of the British Empire rests” ; that a “treaty entered into by both parties on an equal footing would in no way be incompatible with Egyptian independence” (Mr. Macdonald forgot that while there was a British army in Egypt without the consent of the Egyptians, there could be no equal footing between Egypt and Britain) ; that the British would not abandon the Sudan “until their work is done.”<sup>2</sup> The third intervention of Great Britain in Egypt was when Zaglul wanted to set up an Egyptian-Sudanese Commission to enquire into the recent disturbances in the Sudan. The British Government’s reply was that the British Governor-General of the Sudan was alone responsible for order in Egypt. The fourth British intervention came when Sir Lee Stack, the Governor-General of the Sudan and the Commander-in-Chief of the Egyptian army, was murdered on the Cairo Street on November 19, 1924. The British Government sent at once an ultimatum to the Egyptian Government demanding an apology and enquiry into the

1. For the text of the Act, see *Cmd.* 1998 of 1923, pp. 8-11.

2. For this despatch see *Cmd.* 2269 of 1924.

- crime, the suppression of all political demonstrations in Egypt, the payment of an indemnity of £500,000, the withdrawal of Egyptian troops from the Sudan, the retention of the powers of the British Financial and Judicial Advisers and of the officials of the European department of the Ministry of the Interior. The Egyptian Chamber refusing to comply with all these demands, the British troops occupied the Alexandria customs, and the Egyptian officers in the Sudanese battalions were deprived of their command. Zaglul resigned in protest. Ziwar Pasha formed a Cabinet, opened negotiations with Great Britain, and by an exchange of Notes on November 29, 1924, accepted the modified British terms. The Egyptian Government pledged to consult the British Judicial Adviser in matters concerning foreign interests, while the European section of the Department of Public Security remained entirely beyond the control of the Minister of the Interior.<sup>1</sup> The fifth intervention by Great Britain occurred when Lord Lloyd, the British High Commissioner, who succeeded Lord Allenby in October 1925, removed Nashaat Pasha, a Palace official and founder of the Ittihad or Monarchical Party, from his position as Director of the Royal Cabinet. The sixth intervention occurred on June 2, 1926, when the British Government in a Note to the Egyptian Government refused to accept the verdict of the Egyptian court in the Lee Stack murder case, and reserved to themselves "full liberty to take such steps as might prove necessary in order to fulfil their obligations regarding the safety of foreigners." The seventh British intervention of a very serious nature occurred in the same month when after the general elections of May 1926, the Wafdists swept the polls, capturing 150 seats as against the combined opposition strength of 60 seats. The British High Commissioner warned

1. For details see *Great Britain and Egypt (1914-1936)* published by the Royal Institute of International Affairs, pp. 15-18.

King Fuad that a Government led by Zaglul, the Wafdist leader, would not enjoy the confidence of Great Britain. The King had to bow, and he sent for Adly Pasha. The eighth intervention came quickly. In May 1927, the Government of Sarwat Pasha, who had succeeded Adly in April 1927, proposed to increase the strength of the Egyptian army. The British Government at once warned and reminded Sarwat that the projects contemplated were "a matter of direct concern to His Majesty's Government." The Egyptian Government again bowed low. The situation was gradually becoming almost ludicrous. Sarwat wanted to put things on a legal basis, and entered into negotiations with the British Government. On July 18, 1927, he submitted a draft treaty with moderate proposals.<sup>1</sup> Ten days later, the British Government presented a counter draft<sup>2</sup> with which the Egyptian Government disagreed. In November the two Governments agreed upon a third draft. It contained a Preamble, 14 Articles and two Annexes. On February 5, 1928, the British Government agreed further to alter the Annexes in such a way that the British personnel in the Egyptian army would be converted into a military mission; and if the capitulatory regime was not altered within five years, the number of British officials in the public security and police services in Egypt would be decided by the League Council. The Articles in this draft Treaty provided for a perpetual alliance between the two States; Great Britain's right to maintain a military force in Egypt (Art. 7); preference to British subjects while employing foreigners in Egyptian services; an undertaking by the Egyptian Government not to adopt anti-British foreign policy; and a reciprocal undertaking by the British Government to exercise its influence for the abolition of the Capitulations (Art. 9).

For these proposals see *Cmd.* 3050, pp. 7-9.

*Op. cit.*, pp. 9-14.

'In this draft the status of Sudan was not mentioned.<sup>1</sup> The Egyptian Cabinet rejected the draft on March 4, 1928, on the ground that the draft by reason both of its basic principles and of its actual provisions is incompatible with the independence and sovereignty of Egypt, and moreover that it legalises the occupation of the country by British forces.<sup>2</sup>

The rejection of the Treaty caused Sarwat to resign, and on March 16, 1928, Nahas Pasha, the Wafdist leader, on whom the mantle of Zaglul had fallen after his death in August, 1927, became the Premier. The ninth intervention of the British Government came within two weeks. To enlarge public freedom, Nahas decided to amend the Public Assemblies Act which had hitherto empowered the police to break up public meetings at their discretion. The British at once sent a strongly worded Note on April 29, 1928, warning Nahas Pasha that if the Bill was proceeded with, "His Britannic Majesty's Government will consider themselves free to take such action as the situation may seem to them to require." The Egyptian Government condemned this Note as an unwarranted interference in Egyptian home affairs, never to be justified by the Declaration of 1922, which was a purely unilateral act of the British Government. The British reply was that the Declaration, unilateral or bilateral, "embodies the conditions subject to which independence was accorded to Egypt, and His Majesty's Government will not permit it to be either modified or disregarded."<sup>3</sup> At the end Nahas had to yield; but he was soon dismissed by the King on the ground of some doubtful documents published in two Cairo newspapers, charging him with unprofessional conduct as a lawyer.<sup>4</sup>

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1. *Cml.* 3050 of 1928, pp. 35-40.

2. *Op. cit.*, p. 62.

3. For the text of the Note, see *Cml.* 3097 of 1928.

4. In 1928 Nahas, after going through a trial, was acquitted of all charges.

On June 27, 1928, Mahmud Pasha, the liberal leader, formed a minority Cabinet against the Wafd majority, and secured his position by inducing the King to issue a Royal Rescript on July 19, dissolving Parliament for three years, suspending the Constitution and imposing restraints upon the Press. In spite of vehement protests from the Wafd, Government continued by Royal Decrees. On May 1, 1929, the Egyptian Government concluded the Nile Waters Agreement with Great Britain by which the latter recognised Egypt's "natural and historic rights" over the Nile waters and gave assurances "not to disturb or reduce the supply of water at any time or under any circumstances whatsoever."<sup>1</sup> In June 1929, negotiations began between Mahmud Pasha and Mr. Arthur Henderson, the new Labour Foreign Secretary and a new draft Treaty was published on August 6, 1929. The British made further concessions. They agreed to localise their troops in Egypt and terminate formally the "British military occupation"; they were prepared to re-establish the Anglo-Egyptian Condominium over the Sudan under the Convention of 1899; and lastly, they were ready to leave the foreigners in Egypt to the care of the Egyptian Government.<sup>2</sup> But Mahmud Pasha was a minority leader and was afraid to face the Parliament. The leader of the majority party, Nahas Pasha, refused to discuss the draft until a general election was held. Mahmud resigned on October 12, 1929, and Adly Pasha accepted the King's invitation to form a Cabinet mainly with the object of maintaining order and impartiality in the coming elections. A Royal Decree was issued on October 31, 1929, authorising a general election which was held on December 21, 1929, with the result that the Wafdists again swept the polls, the opposition holding 29 seats amongst whom 20 were pro-Wafd Independents. Adly resigned on December 31, 1929, and Nahas

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1. *Cmd.* 3348 of 1929.

2. *Cmd.* 3376 of 1929.

formed a new Government on January 1, 1930. The Parliament opened on January 11, 1930, and negotiations with Great Britain were again resumed. The British Government in its draft Treaty of 1930 made further concessions. The military occupation of Egypt was to be terminated (Art. 1); the admission of Egypt into the membership of the League of Nations would be supported by Great Britain (Art. 2); the responsibility for the interests of the foreigners would devolve exclusively upon the Egyptian Government (Art. 3); the British Government would exercise its influence upon foreign Powers to obtain "the transfer to the Mixed Tribunals of the jurisdiction of the existing Consular courts, and the application of the Egyptian legislation to the foreigners" (Art. 4); an alliance of friendship would be established between the two States (Art. 5); both undertook not to conclude such agreements with foreign States as are inconsistent with the treaty of alliance (Art. 6); disputes between them would be settled by peaceful means according to the League Covenant (Art. 7); without violating their obligations under the League Covenant or the Kellogg-Briand Pact, the two parties would help each other, if one of them is involved in or threatened with war, and Egypt would allow Great Britain the use of her ports, aerodromes and means of communication and "all the facilities and assistance" in her power (Arts. 8, 12). For the security of imperial communications, a British army of 8,000 men and an Air Force of 3,000 men would be located near Islamalia and Port Fuad respectively, for 20 years, after which they would be removed, if Egypt had, in the meantime, become able to ensure "the liberty and entire security of navigation in the Suez Canal" (Art. 9). Ambassadors would be appointed to represent the two States in their royal courts (Art. 10); the status of the Sudan would be determined by fresh Conventions, subject to the Convention of 1899 (Art. 11); disputes between the parties, which could not be settled by

direct negotiations, would be dealt with in accordance with the League Covenant (Art. 13); after a period of 20 years, the terms of the Treaty might be revised (Art. 14); all agreements inconsistent with this Treaty would be abrogated (Art. 15); while the last Article made the Treaty subject to ratification (Art. 16).<sup>1</sup>

This Treaty was rejected by the Egyptian Cabinet and the Wafd led by Nahas Pasha, on the ground that (i) it did not recognise Egyptian sovereignty over the Sudan; and (ii) it did not permit unrestricted immigration of the Egyptians into the Sudan. Nahas asserted that the Condominium of 1899 was a purely administrative measure, without any political bearing. The British Government refused to be bound by this interpretation and the negotiations failed. Nahas now began to lay anew the foundations of constitutional government in Egypt by submitting to the King two Bills designed to prevent the violation or suspension of the Constitution by the King in future. But now that the democratic principles of government had been broken by the British Government, by their repeated interventions in Egyptian politics, the King was bold enough to refuse to initial these two Bills. Nahas rightly resigned on such a vital issue. But the King immediately sent for Sidky Pasha, a pro-palace leader without any following in the country, to take up the charge of administration. The Parliament was adjourned for a month at first, and then on July 12, the session was closed. An autocratic system of government began. The Wafdists petitioned the King to convoke an extra-ordinary session of the Parliament under Art. 40 of the Constitution of 1923. The Premier, Sidky Pasha, rejected the petition as unconstitutional, and thrust his lance into the heart of the Wafd by altering the electoral law of the country in such a way that the popular party could no longer

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1. *Cmd.* 3575 of 1930.



win in the elections. The age of the voters was raised from 21 to 25 years. Election by two degrees was introduced. Educational and property qualifications of the elector-delegates were raised. They were bound to possess either (1) real estate paying a minimum tax of ££1 per annum or buildings having a rental value of at least ££12 per annum ; (2) premises renting for at least ££12 per annum ; (3) or be a tenant of one year's standing on cultivated land taxed at a minimum of ££2 per annum ; (4) or possess a certificate of graduation from a primary school or its equivalent. That was not all. On October 22, 1930, a Royal Decree promulgated a new Constitution superseding the famous Constitution of 1923. The number of Senators was reduced from 132 to 100 ; three-fifths of them to be appointed by the King, while the remainder was to be elected on the two-degree system (Arts. 71-82), while in the Constitution of 1923 only two-fifths were nominated. The number of Deputies was also reduced from 235 to 150 (Art. 80). The two Houses were given equal power. The private members' right of introducing financial bills was taken away (Art. 28). A vote of no-confidence against the Ministry was to be valid only if it was supported by an absolute majority of the total membership of the Chamber, while under Art. 65 of the Constitution of 1923, the Ministry had to resign if "the Chamber of Deputies declares that it has no confidence in the Cabinet." The new Constitution gave the King additional powers. He would convoke an extra-ordinary session of the Parliament only upon an application by the majority of both Houses (Art. 40), whereas under the Constitution of 1923 the application by one House was sufficient. Under Art. 35 of the new Constitution, the failure of the King to return a Bill with his signature within two months for the re-consideration of the two Houses was to be regarded as a veto. In the old Constitution this was regarded as an assent on the part of the King. Under Article 36 of the old law, if a Bill vetoed

by the King, was passed again at any time by two-thirds of both Houses, it would have been regarded as an Act. But by Art. 36 of the new Constitution the Bill could not be re-introduced during the same session; and if introduced in a later session of the same Parliamentary period, the conditions of Art. 36 of the old law would be required for its enforcement, while if it is introduced in a new Parliament, after the general election, then a simple majority of the two Houses would be sufficient to pass it over the King's veto. Under the old Constitution (Art. 96), the King could adjourn the Parliament after it had sat for six months. The new Constitution (Art. 91) reduced the period to five months. Under the old Constitution the King was empowered to issue Decrees when certain exigencies required such action, Parliament being not in session; but if these Decrees were not placed before and passed by the Parliament in the extra-session, which must be convoked by the King if the measure was an urgent one, then they would be null and void. Under the new Constitution, the King was not bound to convoke an extra-session for this purpose. The other powers of the King remained as before.<sup>1</sup>

It is quite clear then that the Constitution of 1930 was a reactionary document, quite illegally promulgated and enforced by a Royal Decree, without the approval of a Parliament or by the majority of the people. Mr. Macdonald, who was then the Prime Minister of England, regarded the Electoral Law of 1930 as an "attack upon the Egyptian Constitution", while Sir Samuel Hoare, the Foreign Secretary, in 1935 described it as "universally unpopular".<sup>2</sup> There was a tremendous agitation against it, and the British Government was not slow to intervene again, even before

1. For the Constitution of 1930, see *British and Foreign State Papers*, Vol. 133 of 1930, p. 357.

2. *The Times*, Nov. 11, 1935,

the new Constitution was promulgated, by warning Sidky Pasha and Nahas Pasha that both of them would be held responsible for the protection of foreign lives and property in Egypt. After the promulgation of this Constitution, the Wafdists held meetings everywhere and condemned it ; but the British police, under the Residency, systematically prevented these pacific demonstrations. A sham election was held under the new electoral law. The Wafdists and the Liberals boycotted it, while the Shaabists ( Sidky's party ) and the Ittihadis ( King's party ) monopolised the seats. Less than half of the actual voters participated in this election of May, 1931. Parliament met on June 20, 1931, and went on staging a travesty of democratic self-government until November 30, 1934, when it was abolished, together with the Constitution of 1930, by a Royal Decree of that date.

In September, 1933, however, Sidky Pasha retired due to ill health, and Yehia Pasha took up the reins of Government. In October, 1934, King Fuad's health caused anxiety. He could not personally attend to his duties. The Director of the Royal Privy Purse, Ibrashi Pasha, exploited the opportunity and took decisions in the name of the King. Yehia Pasha frequently ran to the British Residency for advice and help. The country revolted against this conduct of its Prime Minister, voluntarily invoking British intervention in the domestic politics of Egypt. In the face of popular disapproval, Yehia Pasha quickly resigned and Nessim Pasha succeeded him in November, 1934. The new Prime Minister apparently stood for the earliest restoration of the Constitution of 1923, but on November 30, 1934, he persuaded the King to sign a Royal Decree abolishing the Constitution of 1930, and establishing a personal government of the King through his Ministers, which continued for more than two years.

The Italian invasion of Abyssinia in 1935 introduced a

new factor in Anglo-Egyptian relation. The British had limited the military strength of Egypt to only 12,500 men. The danger to her security was imminent, and this time Nessim Pasha was the first to open negotiations with Great Britain. All Egyptian parties met in Cairo on November 7, and accused Nessim for governing without a Constitution. Nessim had consulted the British Government as to the suitability of restoring the Constitution of 1923, to which the latter had replied in the negative. On November 9, 1935 Sir Samuel Hoare, the British Foreign Secretary, had remarked that though the British Government was not opposed to the return of a constitutional regime in Egypt, yet when "we have been consulted we have advised against the re-enactment of the Constitutions of 1923 and 1930, since the one was proved unworkable and the other universally unpopular."<sup>1</sup> On December 9, a United Front of all Parties was formed against Nessim, who quickly advised the King to restore the Constitution of 1923. The King agreed. On December 19, 1935, the Electoral Law of 1923, with slight modifications, was re-introduced. In January, the Constitution of 1923 was restored. The United Front agreed to open negotiations with Great Britain and to face the military questions and the Sudan issue in the light of the new developments. The British Government, however, warned the Egyptian Government that should the negotiations fail, "the British Government would feel obliged to review their position in Egypt and define their relation with her anew." This was the twelfth intervention, though not for the last time. On January 22, 1936, Nessim Pasha resigned to make room for a Government truly representative of all parties with a mandate of the nation to carry on negotiations with Great Britain. Ali Pasha Maher, the chief of the Royal Cabinet, asked Nahas Pasha to form a Coalition Government,

1. *The Times*, Nov. 11, 1935.

but when Nahas declined it, Ali Pasha Maher himself became the Prime Minister. An Egyptian delegation of thirteen members, representing all parties, headed by Nahas Pasha, opened with Sir Miles Lampson negotiations at Cario on March 2, 1936. The full draft was initialled on August 12, and formally signed in London on August 26, i. e. after almost six months of bargaining. In the meantime, King Fuad had died on April 28, and his son, King Farouk, a lad of seventeen, had ascended the throne. The Chamber elections were held on May 2, 1936, and the elections for the Senate on May 7, under the electoral law of 1923. In the Chamber, the Wafd Party got 166 seats out of 232. In the Senate also they dominated. On May 8, 1936, the Council of Regency was set up. On May 9, Ali Maher Pasha resigned and Nahas became the Premier. Tewfik Nessim Pasha was appointed President of the Senate by a Royal Decree, while Ahmed Maher Bey was elected President of the Chamber, on May 24, the date of the formal opening of the new Parliament. The Anglo-Egyptian Treaty was signed on August 26, and ratified by the Egyptian Chamber on November 14, 1936. The provisions of this Treaty are very important. In some respects they show larger concessions on the part of the British, especially with regard to "the responsibility for the lives and property of the foreigners", the capitulatory regime and the immigration of the Egyptians into the Sudan. In other respects they show more British gain in the bargain than in the 1930 Treaty, e. g. the British army was now raised from 8,000 land troops to 10,000 together with 400 pilots of the Air Force, "a figure which represents a considerable air force strength", and which would be stationed not only in the east side but also in the west of the Suez Canal. The provisions of the Treaty are as follows :

The first Article terminates the military occupation of Egypt by the British forces. Art. 2 provides for diplomatic

representations in each other's courts through Ambassadors. Art. 3 assured British support to Egypt's claim to be a member of the League of Nations. By Art. 4 an alliance for consolidating friendship between the two parties is established. By Art. 5 each party undertakes not to enter into any relation with a third party which may be inconsistent with the alliance. By Art. 6 the parties agree to settle their disputes with third parties peacefully and in accordance with the provisions of the League Covenant. Art. 7 lays down that in spite of the provisions of Art. 6, either of the high contracting parties become engaged in war, the other high contracting party will, subject always to provisions of Art. 10 below, immediately come to its aid in the capacity of an ally. The aid of His Majesty the King of Egypt, in the event of war, imminent menace of war, or apprehended international emergency, will consist in furnishing to His Majesty the King-Emperor on Egyptian territory, assistance in accordance with his power, including the use of his ports, aerodromes means of communications. "It will accordingly be for the Egyptian Government to take all the administrative and legislative measures, including the establishment of martial law and effective censorship, necessary to render these facilities and assistance effective." By Art. 8 the British Government becomes entitled "to station forces in the Egyptian territory in the vicinity of the Canal, in the zones specified in the annexe to this Article, with a view to ensuring in co-operation with the Egyptian forces the defence of the Canal." But it is laid down that "the presence of these forces shall not constitute in any manner an occupation and will in no way prejudice the sovereign rights of Egypt." After a period of 20 years the British forces will be withdrawn, provided Egypt is able by that time to protect the Canal. This ability will be determined by the agreement of the parties, but if they disagree the question may be submitted to the League Council or such other body as the parties may

agree. By Art. 8 the number of British forces is not to exceed 10,000 land troops and 400 pilots of the Air Forces. But the Egyptian Government is required to construct and maintain roads, bridges, railways etc., necessary for military operations and to allow British air forces to fly wherever necessary for training.<sup>1</sup> Art. 10 confirms the obligations that may devolve upon the parties under the League Covenant or the Kellogg-Briand Peace Pact. By Art. 11 it is agreed that "the administration of the Sudan shall continue to be that resulting from the agreements of January 19, and July 10, 1899." The Governor-General is therefore left with supreme powers. But "the primary aim of their administration of the Sudan must be the welfare of the Sudanese." The question of sovereignty over the Sudan had not been prejudiced, and the parties have been left completely free "to conclude new conventions in future modifying the agreement" of 1899. It has been conceded, however, that Egyptian immigration into the Sudan will be unrestricted "except for reasons of public order and health." International conventions are to be applicable to the Sudan only by the joint action of the British and the Egyptian Governments. By Art. 12 foreigners have been left to the care of the Egyptian Government, and by Art. 13 the British Government undertakes to assist Egypt to end the capitulatory regime. By Art. 15, the parties agree to solve their differences about the application or interpretation of the League Covenant, while by Art. 16, the parties have been empowered to open negotiations for the revision of the Treaty, after the expiration of ten years from its commencement but with the consent of both of them. The question has got to be opened after 20 years, if only one party wishes to do so, and if they fail to agree as to the terms of the revision, the difference will be submitted to the League Council or to such other body as the parties may agree upon.<sup>1</sup>

1. For the text of the Treaty, see *Cmld.* 5270 of 1936.

Mahmud Pasha, the Liberal leader, criticised the Treaty mainly because of the military concessions to Great Britain, which he regarded as "incompatible with independence", and because of the expenditure which Egypt agreed to incur for the construction of roads, bridges, aerodromes, etc., for the use of the British army.

The new session of the Egyptian Parliament was opened on November 21, with a speech from the throne in which the abolition of the capitulations was indicated. In pursuance to an Egyptian Note, dated January 17, 1937, the Capitulatory Powers met at Montreux, Switzerland, on April 14, and signed a Convention on May 19, abolishing the Capitulations subject to the following conditions : (1) The Consular Courts in Egypt would be abolished, but their jurisdiction would be taken up by Mixed Tribunals for a period of twelve years. Foreigners would be tried by both foreign and Egyptian judges sitting together. (2) The term "foreigner" would not include natives of Syria, Lebanon, Palestine and Trans-Jordania. (3) The Attorney-General of the Mixed Courts would be a foreigner, while of the two Advocates-General, assisting the former, one will be an Egyptian who will have precedence over his colleague, and direct civil and administrative cases. The foreign Advocate-General will be in charge of criminal cases. (4) Arabic, English, French and Italian were accepted as the official languages before the Mixed Courts. The Convention was ratified by the Egyptian Chamber on July 19, by 120 votes to 2, and came into force on October 15, 1937.

On July 29, 1937, King Farouk reached his eighteenth birth-day, according to the lunar calendar, (though according to the European calendar he would have reached his eighteenth year on the 11th February, 1938, for he was born on the 11th February, 1920), and the Council of Regency came to an end on that date.

The Prime Minister, Nahas Pasha, formally resigned and



reconstituted the Cabinet on August 3, 1937, with four Cabinet changes. On October 20, King Farouk appointed Ali Maher Pasha the Chief of the Royal Cabinet, a post which the latter had held before he became Premier in May, 1936. Nahas again brought the Bill of 1930 to restrain the powers of the King and to ensure constitutional democracy in Egypt. The Bill provided that if a Prime Minister, without any parliamentary majority, refused to hold a general election within the period prescribed by the Constitution and continued to hold office, he would be liable to judicial proceedings for violating the Constitution. King Farouk refused to introduce it, and on December 29, 1937, gave the Prime Minister an ultimatum, through the Chief of the Royal Cabinet, (1) to accept the decision of a Commission appointed by the King to arbitrate on the points in dispute between the Premier and the King, and (2) to reconstruct the Cabinet by including representatives of all parties within a period of twelve hours. Nahas rejected the ultimatum and on the next day the King dissolved the Cabinet by a Royal Rescript, prorogued the Parliament for a month and called Mahmud Pasha to the premiership. Nahas explained his position in these thoughtful words: "The difference between the Palace and the Cabinet is not a question of persons, but of constitutional principles. The question was whether there was to be a constitutional or a purely despotic government. As a principle of constitutional law, the ministry is responsible to Parliament and we claimed that Bills presented for the King's signature before presentation to Parliament for discussion should not be delayed, particularly since a private member can present legislation on his own initiative. Appointments to and dismissal from administrative posts were another point at issue. Unless the Government is free in this matter, it cannot be responsible to Parliament for the administration of the country."<sup>1</sup>

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1. Keesing—*Archives* (1937-40) p. 2880.

Mr. Munro in his book "The Governments of Europe", remarked while criticising the instability of the French Cabinets, that "five episodes in the political life of France during the past forty years have contributed to the demoralisation of party discipline."<sup>1</sup> These were the Wilson scandal, the Boulanger agitation, the Panama Canal muddle, the Dreyfus incident, and the quarrel with the church. In Egypt twelve British interventions in the domestic politics of the country, at a time when she was just beginning to learn the ABC of democratic self-government, have ruined for ever the authority and sanctity of the Constitution. Under the cover of British intervention and sometimes even under their direct instigation and threat, King Fuad knocked down thrice the leaders of the majority party from premiership, and set up as many as eight puppet premiers with no following in the country. This has not only demoralised the leaders of minority parties, like Sidky Pasha and Mahmud Pasha, who have not shown on a single occasion their love for constitutional democracy, but what is more dangerous, it has helped the concentration of all powers in the hands of the Chief of the Royal Cabinet—a person unknown to the Constitution of 1923 and entirely irresponsible, especially when the new King is barely twenty.

To come to our historical resume, King Farouk dissolved the Chamber on February 2, 1938, by a Royal Decree, as the House was full of Wafdists hostile to the Government of Mahmud Pasha. The Royal Decree fixed the date of convocation of the new Chamber on April 12, the general elections being held on April 2, 1938. In the meantime the Wafd suffered an internal split. Dr. Ahmed Maher, President of the Chamber, disagreed with Nahas and formed the Saadist Party on so-called Zaglulist principles, on January 3, 1938. In the April elections, the Government party obtained

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1. p. 493.

93 seats, the Saadists 89, the Ittihad-es-Shaabi 19, the Wafd 12, the Watani 3, and the Independents 47.<sup>1</sup> The Wafdists passed a resolution on April 11, 1938, declaring the election illegal, and null and void, and asked all Egyptians to resume their fight against the "reactionaries and other active British supporters."

On April 16, 1938, the Anglo-Italian Agreement was signed, settling many disputes between these two countries with regard to their African possessions. The Egyptian Minister in Rome, Mustafa El-Sadek Bey, attended the meetings towards their closing stages. The Agreement secured Egyptian interests in the Nile waters and the freedom of the Suez Canal, both in times of war and peace.

On April 26, and again on June 24, 1938, Mahmud Pasha reconstituted his Cabinet and included in it 5 Liberals, 5 Saadists and 3 Independents. The leader of the dissident Wafdists, Dr. Ahmed Maher, became the Finance Minister in the new Cabinet of June 24, 1938. On August 12, 1939, Mahmud tendered his resignation on grounds of ill health, and six days later, Ali Pasha Maher, the Chief of the Royal Cabinet, formed a Cabinet with 5 Saadists and 9 Independents. The Liberals refused to co-operate with the ministry. This ministry has also been replaced by that of Hasan Sabriky Pasha, in the last week of June, 1940.

To summarise, from 1923 to 1940, i.e., within 17 years, the British Government intervened twelve times in the internal politics of Egypt. The country had seventeen ministries in seventeen years. Elections were held almost every two years (between 1924 and 1936 there were six elections). By exercising his royal prerogative the King dissolved four ministries though they had the majority in the country and in the Parliament. There were thirteen ministries set up by the King, though none of them had a

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1. *Political Handbook of the World*, 1939, p. 54.

majority following. During the ill health of King Fuad and the minority of King Farouk, the Chief of the Royal Cabinet, the Director of the Royal Privy Purse and other palace officials monopolised all powers, dictated royal policies and dominated the premiers, imposing upon them coalition cabinets, and sometimes even dismissing them. It seems therefore irrefutable that though Egypt has a constitution in letters she is as far from parliamentary government as the North Pole is from the South.

### How Egypt is Governed

The Egyptian Constitution of 1923 was drawn up by a Committee of thirty Liberals chosen by King Fuad. After an extensive study of the world's constitutions, the Committee presented a draft "which was mainly inspired by the Belgian Constitution, without regard for different social and other conditions obtaining in Egypt."<sup>1</sup> The project of this Committee was revised by a Government Commission, and promulgated by the King on the 19th April, 1923. The Egyptian Electoral Law was promulgated ten days later. The Constitution and the Electoral Law were not, therefore, drawn up or sanctioned by any National Constituent Assembly, as in France or the U.S.A. But an American authority, Dr. O'Rourke, says: "The Constitution was not imposed upon the country by a parliamentary decree of Great Britain, but found its origin in the actions of the existing functionaries of the Egyptian Government. It is impossible to argue that it finds its ultimate authority in the Declaration of February 28, 1922, for one seeks in vain for a mention of it there."<sup>2</sup> I cannot agree with Dr. O'Rourke. The Constitution was drawn up under the dominant influence of Great Britain. Notwithstanding the letter of Lord Allenby to King Fuad, accompanying the Declaration of 1922, it remains a fact that the

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1. Arthur Merton in *Contemporary Review*, Jan., 1931. p. 32.

2. *The Juristic Status of Egypt and the Sudan*, 1935, pp. 65-66.

Constitution was framed when Egypt was occupied by the British Army (the Army is still there, and it has not been removed from Egypt, even for a single day, between 1882 and 1940). It is also well known that the Constitution was drawn up subject to the reservations contained in the Declaration of 1922. The British High Commissioner threatened to review the Declaration and to throw the Constitution overboard if it referred to the Sudan or the British Army in Egypt or the Capitulations, etc., and he actually intervened twelve times, even in such purely domestic matters as the Public Assemblies Bill of 1927. The Egyptian Constitution, was not, therefore, drawn up freely; and on strictly legal grounds, Egypt is not even now a sovereign State. For, the Anglo-Egyptian Treaty of 1936 was also drawn up at a time when Egypt was still occupied by British forces; the Treaty itself merely legalises the reservations of the Declaration of 1922, with certain amendments. But even assuming that it was signed and ratified quite freely by Egypt, still following the accepted definition of sovereignty, we cannot but regard Egypt as a Client State (in the words of Mr. Lawrence); for, she has agreed to the "stationing of British forces" on her soil, and tied herself for all time to the foreign policy of Great Britain—a restraint which even the Dominions, like South Africa and Australia, do not suffer. The reservations in the Declaration of 1922, legalised in the Treaty of 1936, are verily like the reservations contained in the Government of India Act, 1935, giving special powers to the Governor-General and the Provincial Governors to intervene and even to suspend the constitution, if necessary, to discharge their special responsibilities for peace, minorities, native states, public services, etc.. Neither can it be said that the people had any share in the framing of this constitution. It is true that the first Parliament of 1924 accepted and worked on the basis of this constitution. But it must be remembered that it was composed on the basis of an electoral law formed not

by any Constituent Assembly, but by a Committee appointed by the King. Secondly, it should not be forgotten that, had the first Parliament refused to work the Constitution, the King in his turn might have refused to give the people any constitution at all. And certainly the Egyptians had no means, due to the presence of the British Army in Egypt, to force the King to give a more democratic constitution. Indeed, when it was found that parliamentary sovereignty was making its headway in Egypt, the King did not hesitate to nip it in the bud, even before the very eyes of the British who would neither tolerate any government by the majority party, *i.e.*, the Wafd, nor allow the people to take such measures as holding public demonstrations, meetings, etc., for compelling the King to yield to popular demands. The result was that the King became autocratic, dismissing popular ministers, suspending the constitution, changing electoral laws and carrying on government by decrees and with the help of self-constituted leaders like Yehia Pasha, Sidky Pasha, Ali Maher Pasha, etc.,—some of whom were palace officials, and almost all without any following in the country. A liberal interpretation of the constitution of 1923 might have helped the growth of parliamentary government in Egypt; but, by putting his own interpretations, by jealously exercising all his prerogatives, and even by introducing a new constitution in 1930, which increased his already excessive powers, the King ceaselessly tried to carry on a personal government. As Hans Kohn says: "The Egyptians had to carry on a two-fold struggle, against Great Britain and against their own king. It was a struggle not only for independence and sovereignty but also for parliamentary democracy, for assertion of the popular will as the source and director of political life."<sup>1</sup>

However, let us now proceed to give a brief description of

1. *Nationalism and Imperialism in the Hither East.*, p. 79.

the Constitution of Egypt, as it is at present. The Constitution of 1923 was suspended from July 19, 1928, to October 31, 1929, and was replaced by another Constitution on October 22, 1930, which was in force up to November 30, 1934. From December, 1934, to December, 1935, Egypt was governed by the King without a Constitution. In January, 1936, the Constitution of 1923 was restored by the King, and is now in force, together with the Electoral Law of 1923. It has a short preamble and 170 Articles, divided into seven topics, *viz.*, (1) Nature and Government of the State, (2) Rights and Duties of Egyptians, (3) Concerning Power, (4) Finances, (5) Armed Forces, (6) General Dispositions, and (7) Final and Temporary Provisions. Topic 3 is sub-divided into five chapters, *viz.*, (1) General Methods, (2) Concerning King and his Ministers, (3) Concerning Parliament, (4) Judiciary, and (5) Provincial and Municipal Councils. Chapter 3 of Topic 3 is again divided into several sections, dealing with the Senate, the Chamber of Deputies, etc.<sup>1</sup>

### Rights of Egyptians

The Constitution declares Egypt to be a sovereign state, free and independent, having a hereditary monarch at the head and a system of representative government. Following the traditions of the written constitutions of America and Europe, Articles 2-22 mention the fundamental rights and duties of the Egyptian people. All Egyptians are equal before law and "enjoy equally civil and political rights, and are equally subservient to public responsibilities and obligations, without distinctions of race, tongue or religion (Art. 3). The Constitution guarantees the freedom of person, property, opinion, religion, press, communication and association within the limits set by law. The domicile

1. For the Text of the Constitution of 1923, see *Brit. and For. State Papers.*, Vol. CXVIII of 1923; also *Current History*, Vol. XXV, Jan. 1927.

is declared to be inviolable. Elementary education is obligatory for the younger Egyptians of both sexes. It is free in the public Maktabas (Art. 19). The right of petition is guaranteed to every Egyptian of good repute. But in practice these rights have not proved to be real. Thus, the Wafd leaders were arrested and their papers suppressed by the Government of Sidky Pasha in 1930, when they protested against Sidky's measures to modify the Constitution and the Electoral Law of 1924. Again in May, 1931, just before the General Election, pacific demonstrations were prevented and even the holding of the Wafd National Congress was prohibited by executive action. Lastly, it cannot be forgotten that the petition of Nahas Pasha, submitted on January 23, 1938, before the Procurator General, for an enquiry into the attempt on his life made in November, 1937, in which he believed such prominent politicians like Mahmud Pasha (then Premier), and Ali Maher Pasha (then Chief of the Royal Cabinet) were involved, was simply rejected. "These considerations" as Abbas Hilmi II, the ex-Khedive, points out, "permit me to assert that Egypt has never obtained her liberties, and that by means of a ridiculous phraseology (of the constitution), the country and the world at large have been deceived concerning her true situation."<sup>1</sup>

### Sources of Governmental Authority

Articles 23-31 deal with the sources of governmental authority. All power emanates from the nation (in *Current History*, instead of the word "nation", we have "government") and "is exercised in the manner established by the present constitution" (Art. 23). A very interesting question arises as to who was the sovereign authority that granted the constitution. Is he the King or is it the Parliament or the Nation? An Egyptian authority, Shoukri Nagib, says that as the preamble begins with these words: "Nous Roi d'Egypt,

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1. Abbas Hilmi II, *The Anglo-Egyptian Problem*, 1930, p. 92.



considerant.....ordonons", etc., the King is the source of the sovereign power. But another Egyptian authority, El Sayed Sabrey, is of opinion that "En pretant serment devant le Parlement lors de sa premiere reunion, le Roi a perdu tous droit sur la constitution."<sup>1</sup> That is also the opinion of Dr. O'Rourke.<sup>2</sup> But considering the constitutional practices of Egypt from 1923 to 1940, especially the suspension of the constitution by the King and government by Royal Decrees, it seems that whatever might be the letter of the constitution, the King was its grantor and even now continues to be the real sovereign authority in the State.

Article 24 vests the Legislative Power in the King concurrently with the Senate and the Chamber. The Executive Power belongs to the King "under conditions established by the present Constitution." The Judicial Power is exercised by the Courts whose decrees and sentences "are issued and executed in conformity with the law and in the name of the King" (Arts. 24-31).

### The King

The Chief Executive in Egypt is the King. The throne was declared hereditary in the male line by primogeniture in the dynasty of Mohamed Ali. Failing such direct line, the Law of Succession of April 13, 1922, provides that the throne is to pass first to the King's brothers and their direct descendants by right of age, each King establishing a new House, and the succession being vested in his direct line. Ex-Khedive Abbas Hilmi is expressly excluded from the throne of Egypt; but his direct and legitimate descendants are not. One who is not a Moslem, or the son of Moslem parents or who is a female or a descendant of a female member of the Royal Family, is excluded from the throne. In case there is no heir to the throne, the King

1. *"Le pouvoir Legislatif et le pouvoir Executif en Egypt"*, 1930, p. 35.

2. *Op. cit.* p. 69.

may name his successor with the consent of two-thirds of the members of the two Houses of Legislature, each of which must have at least three-fourths of its members present for this purpose. In case the King fails to name his successor, the two Houses must meet within eight days ( in any case, on the ninth day ) from the death of the King and elect his successor by a majority of two-thirds. At least three-fourths of the members must be present on such an occasion, if the election be held within eight days but if it is held afterwards, any number of the present and a simple majority of vote will be sufficient.

The powers of the King are numerous and real. His body is inviolable. He sanctions and promulgates the laws and makes provisions for their execution. He summons, prorogues and dissolves the Parliament. He creates and confers titles, honors, civil and military rank and decorations. He has the right to pardon. He organises the public services. He can proclaim a state of siege. He is the Commander-in-Chief of the Army, Navy and the Air Forces. He declares war, concludes peace and makes treaties of all sorts. He appoints and dismisses his ministers and ambassadors, etc. But in the letter of the constitution, there are certain limitations and conditions imposed upon the King. He must take an oath of loyalty to the Constitution (Art. 50) ; he "exercises his powers through the medium of his ministers" (Art. 48) ; he cannot be the chief of another state without the consent of the Parliament ; he cannot make any treaties of peace or alliance or commerce or navigation or those which affect the territories or public treasuries of Egypt, or which are prejudicial to the fundamental rights of the Egyptian citizens, without the assent of Parliament. The proclamation of a state of siege and the decrees made by the King to meet urgent needs, must be presented before the Parliament, which, if not in session, must be convoked in extra-session ; otherwise they will cease to have power as laws. The King's

power to adjourn the session of Parliament is subject to the limitation that "the adjournment may not exceed a month's time, nor be renewed in the same session without the consent of both Chambers" (Art. 39). The King's right to dissolve the Chamber of Deputies is subject to two limitations; first, the act of dissolving the Chamber must contain the date of new election, which must be held within two months from the date of dissolution, and the new Chamber must meet within ten days following the elections. Secondly, the new Chamber cannot be dissolved "before settling the same question" for which the old one was dissolved (Arts. 88-89). The King is empowered by Art. 40 to convoke Parliament for extra-sessions and to adjourn it. But this Article contains the following important provision, which was violated by King Fuad in 1930 under the instigation of Sidky Pasha, when the Wafd majority in the Chamber petitioned the King to convene the Parliament in extra-ordinary session: "This convocation (in extra-session) can take place also by petition signed by an absolute majority of the members composing one or the other of the two Chambers." Article 48, which says that the King exercises his powers through the medium of his ministers, is again clarified by Art. 65 which enjoins ministerial responsibility in these words: "When the Chamber of Deputies declares that it has no confidence in the Cabinet, the Ministry *must resign*. If the vote does not endorse, a minister should resign." This Article has again been violated by the King, on many occasions, assisted as he has always been by self-constituted leaders with no following in the country. Out of seventeen ministries the King had only three popular Wafd ministries, who were also driven out of office on account of their insistence upon a democratic interpretation of the Constitution. All the rest were the King's creatures. Lastly, the King's power to sanction and promulgate laws is subject to this condition that such laws must be approved by Parliament, while his vetoing power is restricted to returning a

Bill, approved by Parliament, within a month for revision. If the King does not return a Bill within this period or if the Bill returned in the aforesaid way, is passed again by a two-thirds majority of the members composing both Chambers, it becomes a Law and shall be promulgated. But if the Bill is not passed by this majority, then it cannot be discussed again in the same session. If in the following session the Bill is passed by the Parliament, "with the same majority," then it becomes a Law and shall be promulgated. But this Article was rendered ineffective by the King who suspended the Parliament itself for several times and years. The Constitution allows the King (and the Regents during his minority) an allowance known as the Civil List, to be fixed at each accession to the throne, for the duration of the reign. By Law No. 58 of 1938, the Civil List of King Farouk has been fixed at ££. 100,000 and the allowance for the Royal Family at ££. 100,000.

During the minority of the present King, a Council of Regency was appointed. The persons named by the late King Fuad in his sealed envelope, to be appointed Regents to his son, being dead and gone, the Parliament after discussion accepted the three names proposed by Nahas Pasha, the leader of the majority party in the Chamber, on May 8, 1936. The Regency expired on July 29, 1937, when King Farouk reached his majority (18 years), according to lunar calendar. By Article 55, however, the Council of Ministers is empowered to exercise the constitutional powers of the King, under its responsibility, during the period intervening between the date of the death of the King and the taking of oath by his successor or Regents. The King of Egypt has also a Royal Cabinet, presided over by a Chief who is appointed by the King and who exercises considerable influence over State-affairs. \*Sometimes, the Chief of the Royal Cabinet becomes the Premier of Egypt, when the King does not find any other individual to rely on (e.g., Ali Maher Pasha was twice Chief

and twice Premier, after the King had dismissed Nahas Pasha).

### The Ministers

The Council of Ministers is at the head of the State Department. Only Egyptians can be ministers ; no member of the ruling dynasty can be a minister under Article 59, which thereby secures ministerial independence. A practice has gradually grown up of including a Christian Egyptian as a minister. There were two Coptic Premiers, *viz.*, Burtos Pasha Ghali (1910) and Youssef Pasha Wahaba (1919), while under the Wafdist administration, there were two Copts in the Cabinet. As Merton says : "There is an unwritten law that every Cabinet should include at least one Christian Minister. It is consequently possible that the Premier may not in future be a Muslim."<sup>1</sup>

Every decision of the King, in order to be effective, must be countersigned by the President of the Council of Ministers and the Ministers concerned (Art. 60). Ministers are jointly and severally responsible to the Chamber of Deputies and "in no case can a verbal or written order from the King relieve a Minister of his responsibility" a provision which reminds one of Danby (Arts. 61-62). Ministers have free access to both Houses, can answer questions put to them by the members of the Parliament, cannot accept any post or have any interest in commercial or financial enterprises, and must resign when they lose the confidence of the Chamber of Deputies. The Chamber by a two-thirds majority can put Ministers on trial for all infractions committed by them in the exercise of their functions. A Committee of the Chamber will conduct the accusation, while a special Court composed of seventeen judges, of whom eight are Senators elected by lot, eight Egyptian magistrates of the highest Court, taken by order of seniority, and one, the president of this highest Court, who

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1. *Op. cit.*, p. 38.

will be the Chairman of this Special Court, shall try the accused. In cases that are provided for, the Pandal Code is to be applied ; in other cases, Special Law. Convictions are held by a majority of twelve votes. When a Minister is accused, he must resign ; and when condemned, he cannot be pardoned except with the assent of the Chamber of Deputies. The principle of homogeneity has not developed in the Egyptian Cabinet system due to the King's persistent endeavour to establish Coalition Cabinets (all Cabinets excepting the three Wafd Cabinets were Coalition Cabinets). Ministerial responsibility has been rendered a farce by the suspension of Parliaments, alterations of the Constitution, and by the resolute refusal of the Cabinet, backed by the King, to resign even when it has been actually defeated in the Chamber. The ex-Khedive Abbas Hilmi truly remarks : "Parliamentary action, therefore, in Egypt is non-existent, and we may hasten to add that the situation of Ministers as regards their relation with the palace completely shelters them from all criticism"<sup>1</sup> There are at present twelve departments, *viz.*, (1) Foreign Affairs ; (2) Interior ; (3) Finance ; (4) Agriculture ; (5) Justice ; (6) Defence ; (7) Health ; (8) Communications ; (9) Education ; (10) Commerce and Industry ; (11) Wakfs ; (12) Public Works. A new Department was created in 1939, that of Social Services. Sometimes, two departments are taken charge of by the same Minister, *e. g.*, the Premier Ali Maher Pasha was the Minister of Foreign Affairs and of Interior ; while in this Cabinet (1939), besides the Ministers in charge of the above-mentioned departments, there were two Ministers without portfolios.

### The Senate

The Egyptian Parliament (Balraman) is composed of two Houses, the Senate (Majlis ash Shuyukh) and the Chamber of Deputies (Majlis ash Nuwwab). The number of Senators

1. *Op. cit.*, p. 97.

fluctuates, for it is based on the ratio of one Senator for every 1,80,000 inhabitants or fraction thereof, not lower than 90,000. The country is divided into equal electoral districts for the return of one Senator from each. Besides these elected Senators, the Constitution provides for two-fifths of the total number of Senators to be nominated by the King, *i.e.*, after determining the number of elected Senators on the aforesaid basis, the number of nominated Senators is settled at two-thirds of the former. The tenure of a Senator is ten years, but half of the Senators, elected or appointed, are removed every five years. The President of the Senate is chosen by the King, and the two Vice-Presidents are elected by the Senators from amongst themselves, each for a period of two years. When the Chamber is dissolved, the session of the Senate also becomes automatically suspended. To be a Senator one must be a male Egyptian of 40 years, possessing sound mind and belonging to one of the following categories : Princes ; high State officers like Ministers, Diplomatic Representatives, etc. ; Presidents of the Chamber of Deputies ; Under-Secretaries of State ; Presidents and Judges of the Court of Appeal ; Attorney-Generals ; Presidents of the Lawyers' Associations ; Officials of the State of the rank of Director-General, past or present ; high representatives of the Corps of Turkish Doctors of law and of the Clergy ; retired general officers of the rank of Lewa ; members of the Chamber of Deputies during two legislatures ; landowners paying annual taxes of £E.50 ; and persons of annual income of £E.1,500 and taking part in business or belonging to a learned profession. The Egyptian Senate is thus a very important body representing, as it does, national wealth, wisdom and experience. At present there are 147 members (after the election of May 17, 1936), distributed amongst the various parties as follows : Wafd—69 ; Saadist—15 ; Liberal Constitutional Party—13 ; Ittihad es-Shaabi—6 ; Wattani—1 ; Independents—33 ; Undecided—10.

## The Chamber of Deputies

The members of the Chamber are all elected under the Law of 1923 on the basis of one Deputy for every 60,000 inhabitants or fraction thereof, but not less than 30,000. The country is divided into single-member electoral districts. The Deputy must be 30 years of age or over. For the election of both the Senators and Deputies each group of thirty electors nominates one Delegate, and these Delegates again elect the Senators and the Deputies. Therefore, in Egypt election is by two-degrees under the Electoral Law of 1923. This system was replaced in 1924 by that of direct election—a measure introduced by Zaglul Pasha ; but, at present, the indirect system prevails since the restoration of the Constitution in 1936. The primary voters must be male Egyptian subjects of 21 years of age or over, not suffering from any physical, mental or legal disqualifications. The life of the Chamber is five years, but it can be dissolved earlier by the King subject to the conditions noted above. The President and the two Vice-Presidents of the Chamber are elected from among its members at the beginning of each ordinary session.

Both the Senators and the Deputies represent the whole nation. They must take an oath of loyalty to the King and to the Constitution. They are not bound by pledges. The Parliament is convoked by the King every year in ordinary session before the third Saturday of November, and “in default of being summoned it meets automatically at this date” (Art. 96). But, as we have seen, this categorical provision was flagrantly violated by King Fuad thrice within thirteen years. The sessions of the two Houses are to be simultaneous and to last ordinarily six months. Neither of the two Houses can make resolutions if the majority of its members are not present (Art. 99). Every Bill must be referred to a Committee for examination and report. When it is adopted by one House, it will be sent by its President to the President of



the other House. But if it is rejected, it cannot be brought up again in the same session (Art. 106). Every member is entitled to ask the Ministers questions, after giving a notice of at least eight days, except in case of urgency. He also enjoys all the privileges usually enjoyed by the legislators of Western democracies, *i.e.*, freedom of discussion, freedom from arrest, etc., during the continuance of the session. Members of Parliament cannot accept any title or decoration, unless it be military, during their term of office and they are liable to be deprived of their commission by an adverse vote of the members of a House. After a delay of two months from the date of its vacancy, a seat must be filled up. The re-election of the Chamber and the renewal of half of the Senators are to take place during the sixty days that precede the expiration of their term; otherwise, the terms are prolonged until the elections or the renewal. Each House makes its internal regulations for keeping order and prosecuting its business. The Ministers always have the right to demand an adjournment of the Chamber of Deputies for eight days after every vote of no-confidence. The King pronounces the close of the session. On important occasions the two Houses, convoked by the King, might meet jointly in Congress under the presidency of the President of the Senate, and yet at the same time each might continue its separate constitutional functions. But, in order to pass a resolution, there must be an absolute majority in each House, excepting in matters dealing with the budget, when an absolute majority of the total votes of the Congress will be sufficient (Arts. 120-123).

The Parliament has full control over the revenues and expenditures of the State. No tax can be imposed except by right of law. No public loan or any financial liability can be contracted without the consent of Parliament, while monopolies and concessions can be granted only for a limited period and with its consent. Every year, at least three

months before the financial year, the budget must be presented before it and voted topic by topic. The Chamber of Deputies has the special right of discussing and voting the budget, first. Article 140 definitely says that "the Parliamentary session cannot be closed before voting the budget"—a provision which King Fuad violated so often; while Article 141 guarantees the observance of the pledges given by Egypt for the security of her public and foreign debts—which again reminds us that the Constitution of 1923 was drawn up subject to the reservations contained in the Declaration of 1922. The Constitution also provides that the quota of the army, its organisation, the rights and duties of the soldiers as well as those of the police forces are to be determined by law (Arts. 146-148). In Topic VI there are some general provisions which declare Islam as the State religion, Arabic as the official language, and forbid extradition of political refugees "without prejudice to international agreements for the protection of the social order". Article 154 prohibits the application of this Constitution in any way that might affect the vested interests of the foreigners in Egypt, acquired "by virtue of laws, treaties or acknowledged customs" (Arts. 149-54). The most important Article in the whole Constitution is No. 155. It declares categorically that "no disposition of the present Constitution can, *on any pretext whatever*, be suspended, except temporarily in times of war or state of siege, and *in a manner determined by the law*. *In any case, the assembling of Parliament, under conditions established by the present Constitution, cannot be stopped*". This most explicit provision of the Constitution was violated by the King on more occasions than one. For the revision, alteration or amendment of the Constitution, a resolution declaring the necessity for such revision must be passed by an absolute majority of all the members of each House and receive the King's sanction. Then, after deliberation, the necessary amendments must be passed by a majority of two-

thirds of the voters present. But on such an occasion, two-thirds of the total number of the members must be present to make the deliberations and voting valid. The King as well as each of the two Houses may propose amendments; but provisions relating to representation in Parliament, the order of succession to the throne and the principles of liberty and equality cannot be made subject to any revision whatsoever.

### Local Government

Articles 132 and 133 provide for the establishment of Provincial and Municipal Governments, with their local Councils, where members are elected or nominated according to law. Egypt has been divided into 5 Governorships (Muhafzas) of principal towns and 14 Mudirs or Provinces subdivided into districts or Markazas. These districts, ninety in number, are again subdivided into 3,000 circumscriptions, each under an "Omda," assisted by a "Sarraf," *i.e.*, a treasurer. Due to the existence of a large number of foreigners in the following 14 towns, they are governed by Mixed Commissions composed of equal number of Europeans and Egyptians :—Alexandria, Beni Suef, Benha, Damanhur, Kafr-el-Zayat, Mahalla-el-Kubra, Mansura, Medinet-el-Faiyum, Minya, Mit Ghamr, Port Said, Tanta, Zagazig, Zifta. The Mixed Commissions in these towns, excepting that of Alexandria, cannot impose any new tax upon the non-Egyptian residents without their previous consent. Besides these there are 56 towns having local commissions composed of only four elected members and two others nominated by the Central Government, for the protection of foreign interests. There are also 39 towns whose administrations are carried on by village councils composed of only four members, the Central Government having no power to nominate any foreigner in these councils. The Provincial Councils consist of two elected representatives from each Markaz, and are presided over by the Mudirs who are appointed by the Central

Government. Among the functions of these Councils, the following are the most important: Elementary Education, Public Markets, Local Police, creation of new hamlets, etc. The Central Government has complete veto power over the actions of these provincial and local bodies of every description, especially when they overstep their power or injure the general good.

### The Egyptian Judiciary

Pre-British judicial administration was the most rotten thing in Egypt. The first attempt to introduce reforms was made by Nubar Pasha and Lord Cromer. Matters relating to the personal status of the Egyptians were decided in the Cadi's Courts, while other civil and criminal matters were transferred to Tribunals of three classes, *viz.*, (1) the Courts of First Instance (Medjlis Ibtadieh), (2) three Courts of Appeals (Medjlis Estinaf), (3) a Superior Court of Cairo (Medjlis el Akham). The International Agreement, signed in 1875, transferred some civil and criminal cases in which foreigners were involved to the Mixed Tribunals; while all criminal cases, in which only foreigners were involved, were tried by Consular Courts. In 1880 the Egyptian Government appointed a Commission for framing the necessary Codes for the Native Courts as a result whereof the "Reglement Organique" was promulgated by a Khedival Decree on November 17, 1881. There was a Court of First Instance in each Mudirich with three judges, one of them being a European, forming the quorum. Above them were two Courts of Appeal, one for Upper and the other for Lower Egypt, each having five judges, two of them being Europeans. The French system of Administrative Courts was purposely omitted, while in the *Corpus Juris* a number of equitable provisions to meet the conditions of the poor *Fellaheen* was incorporated. In 1905 Markaz Tribunals were established to expedite the administration of justice. In 1912

Cantonal Courts (two in each Markaz) superseded the former, while the latter were also abolished in 1930, their jurisdiction being transferred to the Summary Tribunals.<sup>1</sup>

Due to capitulatory rights, Egyptian judicial system has become very cumbrous and complex. It is summarily described in Articles 30 and 124-131 of the Constitution of 1923. The jurisdictions of the Courts are determined by the law of Egypt; the judges are appointed and dismissed "according to conditions determined by law," and they are independent. "No power of the State can interfere in their proceedings" (Art. 124). The Courts of Egypt can be divided into four groups, (1) National Courts, (2) the Courts of Personal Status, (3) the Consular Courts and (4) the Mixed Tribunals. The National Courts are absolutely under the control of the Egyptian Government. They exercise civil and criminal jurisdiction in all matters concerning Egyptian subjects only, excepting cases of domestic relations or personal status. The substantive and procedural laws enforced in these Courts are of independent Egyptian origin and have no connection with the other judicial structures in the country. These Courts are divided into three classes, *viz.*, Summary, District and Appeal Courts. There are 98 Summary Courts and 9 Judicial Delegations, each presided over by a single judge, having civil jurisdiction in cases up to ££ 250 in value, and criminal jurisdiction in cases punishable with fine or by imprisonment for not more than three years. Of the District or Central Courts, there are 11, each of the Chambers of which consists of three judges. These Courts have both original jurisdiction in civil cases of higher values and appellate jurisdiction, hearing appeals from the Summary Tribunals. Serious crimes and all press offences are tried

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1. *Cmd.* 6875, Egypt, No. 3 (1919); also W. Fraser Rae - *Egypt to-day* (1892), Chapter XI; and A. Milner - *England in Egypt*, Chapter X.

by special monthly Assizes formed by three judges of the Court of Appeal. There are only two such Courts of Appeal, one at Cairo and the other at Assiout, hearing appeals from the District Courts. In 1931 a Court of Cassation was set up at Cairo, composed of ten judges divided into two Chambers of five judges each, one for civil appeal and the other for finally reviewing criminal cases on questions of law. These national courts, established all over Egypt, have separate bars of their own and employ Arabic language.

The second class of Courts in Egypt are those that deal exclusively with questions of personal status, *i. e.*, marriage, divorce, probate, guardianship of minors and lunatics, appointments of tutors and mandatories. They have no jurisdiction over foreigners who were subject to their Consular Courts in those matters, before the Montreux Convention, and are now subject to the Mixed Tribunals. All religious communities have the right to be tried in these matters in the courts of their religious heads or Patriarchs.

The third class of Courts in Egypt was the Consular Courts which had originated as a result of the treaties entered into by Turkey with the Christian States, granting their nationals special commercial privileges, immunity from direct taxation, inviolability of domicile, protection from arbitrary arrest and exemption from the jurisdiction of the Native Courts. The Consular Courts, uptill 1937, had exclusive jurisdiction over (1) all civil litigations between foreigners of the same nationality; (2) all crimes and misdemeanours committed by foreigners, excepting those that came before the Mixed Courts; and (3) all questions of personal status affecting their nationals. But the Montreux Convention of May 9, 1937, abolished these Courts and transferred their jurisdiction to the Mixed Tribunals for a period of twelve years.

The fourth and the last class of Courts in Egypt

is the Mixed Tribunals.<sup>1</sup> The jurisdiction of these Mixed Courts covers all civil and criminal cases arising between Egyptians (including the Egyptian Government) and foreigners; between foreigners of different nationalities; and since the Montreux Convention, all cases between foreigners of even the same nationality. But it does not cover cases which involve "acts of sovereignty" of the Egyptian State. In case of conflict of jurisdiction between the Mixed Courts and the National Courts the former's viewpoint is upheld. The Codes which these Mixed Courts apply are determined by treaties, statutes and judicial decisions of these Courts. Modifications of these Mixed Codes can be made only by the International Legislative Assembly composed of the judges of the Mixed Courts of Appeals and a few additional members. But even this Assembly cannot pass any law imposing direct taxes upon the Capitulatory Powers.

The Mixed Courts consist of a Court of Appeal sitting at Alexandria and three District Courts sitting at Cairo, Alexandria and Monsorah. The judges of these Courts are chosen by the Egyptian Government from among the Egyptians and the foreigners in a certain fixed proportion. But though the Egyptian Government, while choosing the foreign judges, consults unofficially with the Ministers of Justice of the Capitulatory Powers, yet its choice is not strictly confined to their nationals.<sup>2</sup> The judges of the Mixed Tribunals are strictly Egyptian officials appointed by the Egyptian King and paid out of the Egyptian Treasury. Their writs run in the name of the Egyptian King, while their judgments are enforced by Egyptian authorities. But, under the Montreux Convention, the Egyptian Parliament cannot

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1. For the Texts of the various Portocols with France, Germany and Great Britain, of 1874-75, establishing the Mixed Tribunals, see Lord Lloyd—*Egypt Since Cromer*, Appendix "A" pp. 363-75.

2. Jasper Y. Brinton—*The Mixed Courts of Egypt*, p. 79.

alter the Mixed Codes at least for a period of twelve years from 1937.<sup>1</sup>

### Political Parties in Egypt

The origin of the Egyptian political parties may be traced back to the days of the revolt of Arabi Pasha, the great nationalist leader who demanded Constitutional Government in Egypt as early as 1881. The introduction of the British element in Egyptian politics complicated the political issues, as it was no longer a question of merely internal distribution of powers. Most of the older parties were common in their hostility to British occupation of the country, while there were some who were marked by their loyalty to the King as against the popular agitators. But since the Anglo-Egyptian Treaty of Alliance of 1936, which was signed on the Egyptian side by the representatives of all political parties in the country, excepting the Wattani, these parties are now "faced with a re-definition of their programmes in which national defence, finance and social reform are receiving careful attention".<sup>2</sup>

Of the existing political parties, the Wattani or the National Party is the oldest, founded as it was on October 22, 1907, by Mustafa Kemal Pasha. It is an extreme wing of the public opinion led by Fikry Abaza Bey, and demanding nothing less than complete and immediate withdrawal of all British forces from Egypt, absolute independence of the country, recall of the dethroned Khedive, Abbas Hilmi, and neutralisation of the Suez Canal under Egyptian protection. It demands the assertion of Egyptian sovereignty over the Sudan and the cession of such regions as Berber and Zeila on the Red Sea. At present the party has few followers.

The Liberal Constitutional Party was established on

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1. For some other provisions as to the appointment of the Attorney-General and the two Advocates-General, see the Montreux Convention of 1937.

2. *Political Handbook of the world*—1939, p. 55.



October 29, 1922, under the presidency of Adli Yeghen Pasha who subsequently left it. It is now led by Mahmud Pasha and is supported by the aristocrats, monied class and the intellectuals. Its programme is a gradual improvement of the social and economic condition of the country and moderation in the political relation with Great Britain. But it also wants complete independence for Egypt, her sovereignty over the Sudan and internally a limited monarchy.

The Wafd was formally formed in April, 1924, under the leadership of the great nationalist, Saad Zaglul Pasha, after the first election under the Constitution of 1923. But as early as 1919, it was the only party in Egypt which commanded the unstinted allegiance of the people. It has set up district and local committees throughout the country, and had such a complete organisation that Lord Milner was compelled to acknowledge it in 1920 as the only representative body of the people. Its leaders and followers have sacrificed their lives and suffered long terms of imprisonment to free the country from foreign yoke and internal autocracy. After Zaglul's death in 1927, the party is now under the leadership of Nahas Pasha. Like other parties, it demands the complete independence of the country, the withdrawal of British forces from the Egyptian soil and the recognition of Egyptian sovereignty over the Sudan. At present, its most characteristic programme consists of calling a National Assembly, complete Parliamentary government with nominal powers for the King and direct suffrage for the people.

The fourth party in Egypt is the Ittihad-es-Shaabi or the Popular Union Party. It is popular only in name and has very few followers. It is made up of the union of the Ittihad with the Shaabi Party of Ismail Sidky Pasha. The Ittihad is a Palace Party, founded on January 10, 1925, by Yehia Ibrahim Pasha, with the support of the King and the Court. Its object is specially to preserve, consolidate and even in-

crease the powers of the King. Its present leader is Hilmi Issa Pasha. The Shaabi Party of Sidky Pasha was formed in 1930 just before the introduction of the reactionary Constitution of that year. Its object was also to preserve the royal prerogatives and to suppress the influence of the popular element in the Chamber, by introducing amendments to the Constitution and holding elections under two-degree schemes.

The fifth and the last party in Egypt, also the latest, is the Saadist Party. It was formed in 1938 by Dr. Ahmed Maher, the leader of the dissident Wafdists, as a result of disagreement with the policy of Nahas Pasha. The Saadists profess to follow strictly the political principles of Saad Zaglul Pasha and, it is said, that there is no fundamental difference between their ideologies and those of the Wafdists.

The strength of the various political parties of Egypt in the Chamber of Deputies, after the election of April, 1938, stood as follows :—Liberal Constitutional—93 ; Saadist—89 ; Ittihad-es-Shaabi—19 ; Wafd—13 ; Wattani—3 ; Independents—47.

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## CHAPTER III

### THE SUDAN

This vast semi-desert country, as big as British India, is inhabited by a conglomeration of heterogeneous races. Roughly, "the desert zone in the north is now peopled by nomadic Hamites and Arabs, the central region by Arabs, Nubas and Negroids, the tropical belt south of the twelfth parallel, by Negroes"<sup>1</sup> The present population is near about 6,500,000, while the area is 969,600 sq. miles, the density being 7 per sq. mile. North of Khartum and over the greater part of Kordofan and Darfur, Arabic prevails, while over the rest Naban, Dinka, Bari, Bedawiya and many other languages are spoken. In the North, the Arabs, the Bejas, the Nabians (Barabra) are all Moslems of the Sunni sect. In the South, paganism still holds the day, Islam having made "scarcely any progress". Christian propaganda and proselytism are forbidden in the Northern Sudan, where religious fanaticism is not altogether absent. In the South there are many Christian Missions. The frontiers of the country have been settled by various treaties and agreements with France, Italy, Belgium and Abyssinia.<sup>2</sup> With Egypt Sudan has had a historical relation, but Arthur Merton says :—"there is neither ethnological, linguistic nor religious tie between the Egyptians and the bulk of the population of the Sudan who in reality are entirely alien to their neigh-

1. *Anglo-Egyptian Sudan*—Peace Hand-books, issued by the Historical section of the Foreign Office, London, 1920, Vol. XVI. No. 98, p. 14.

2. *Op. cit.*—pp. 32-41.

bours in the North".<sup>1</sup> The Ex-Khedive Abbas Hilmi holds, on the contrary, the opinion that the people of the Sudan are of the same race and religion as those of Egypt, and when invested with representative institutions Sudan will one day "form one member of a Federation of the United States of the Nile"<sup>2</sup>

Arab infiltration into the Sudan began as early as the 7th. century. A. D. and since then an admixture of Negro and Arabic in northern Sudan has been going on.

In 1820, Mehmet Ali, the founder of modern Egypt, conquered Sudan upto Khartum. He took a lease of the Red Sea ports of Suakim and Massawa from his overlord, the Sultan of Turkey; established a strong absolute government over the Sudan, and monopolised its foreign trade. His successors extended the frontiers of their new dependency, and legalised their hold upon the Sudan through various Firmans issued by the Sultan of Turkey. But while the Khedivate over Egypt was conferred upon Mehmet Ali and his successors hereditarily, the right to administer the conquered districts of the Sudan was conferred only for *life* to each Khedive. Thus, the Firman of February 13, 1841 says :—"Je Vous ai accorde, *sans heredité* le gouvernement des Provinces.....vous vous attacherez à administrer et à organiser ces provinces selou mes vues equitables.....Chaque année vous transmettez à ma Sublime Porte la liste exacte de tous les revenus annuels". By other Firmans of 1866, 1873, 1879, Sudan became a political appendage of Egypt, governed by the Khedive in the name of the Ottoman Sultan. The rights of the Khedive over Egypt, and especially over the Sudan, were definitely limited by the terms of these Firmans. The Khedive could not alienate any portion of the territory or

1. Arthur Merton—*The Sudan in the Nineteenth Century and After*, September, 1924, p. 441.

2. Abbas Hilmi II—*The Egyptian Problem*, 1930, p. 24.

sovereignty over Egypt or the Sudan to any third party under any pretext whatsoever. Thus the Firman of 1879 lays down that "Le Khedivat ne saura, sous aucun pretexte ni motif, abandonner à d'autres, en tout ou en partie, les privileges accordés à l'Egypte et qui lui sont confiés, et qui sont une émanation des prerogatives inherentes au pouvoir Souverain, ni aucune partie du territoire".<sup>1</sup>

The Khedive's administration of the Sudan was marked by corruption, bribery, tyranny. Taxes were heavy, and ruthlessly collected by the Bashi-Bozouks. The people were plundered, robbed and ill-treated. In spite of occasional half-hearted attempts to stop slave trade, it was in full vigour. The Egyptian Government was "almost universally hated and abhorred"<sup>2</sup> In 1877 Col. C. F. Gordon was appointed Governor of the Sudan by the Government at Cairo. He practically stopped the slave trade, but when he left the post, old evils again raised their heads. Everywhere discontent was rife. The spark to the smouldering embers was set by the sudden emergence of a Dongolese fanatic, Mohammed Ahmed, who proclaimed himself as the much longed-for Mahdi, at last descended on earth for the deliverance of his people. The Mahdi played upon the religious feelings of the illiterate masses, organised a powerful army, defeated the Egyptian forces under Hicks Pasha, Slatin Pasha, Osman Digna and Lupton Bey, one after another. The Egyptian Government tried to procure the help of the Sultan, but the British Government insisted on Egypt's "abandoning the territory, south of Wadi Halfa." On January 4, 1884, Lord Granville sent a telegram to Lord Cromer in which he wrote the following :—"It is essential that in important questions affecting the administration and safety of Egypt, the advice of Her Majesty's Government should be followed, as long

1. Brt. & For. State Papers, Vol. LXX, p. 298.

2. Cromer—*Modern Egypt*, 1908, Vol. I, pp. 350-353.

as the provisional occupation continues. Ministers and Governors *must carry out* this advice or forfeit their offices”<sup>1</sup> Hence, the entire responsibility for the evacuation of the Sudan and the loss of Egyptian sovereignty over that territory rests with the British Government.

On January 26, General Gordon was sent to Khartoum to arrange for the withdrawal. But he played “battledore and shuttlecock,” and instead of preparing for evacuation he employed his time and energy “to smashing up the Mahdi.”<sup>2</sup> The result was a foregone conclusion. The forces of the Mahdi massacred General Gordon and his troops. The Dervish Government was established at Khartoum, but the Mahdi died in June, 1885, and his disciple Khalifa Abdullah became his successor. In 1889 he attempted an unsuccessful invasion of Egypt. The Italian defeat at Adowa in 1895, and the Fashoda incident in 1896, brought home to the British the insecure position of southern Egypt. An Anglo-Egyptian expedition under Sir H. Kitchener was sent against the Khalifa which after varying fortunes, defeated him in September, 1898. General Kitchener entered Khartoum and raised the Turkish and the British flags simultaneously on September 4, 1898. For better government and for securing British political rights in the Sudan, an Anglo-Egyptian Convention was signed on January 18, 1899. This Convention is the basis of the Sudanese administration up to this day. Hence its provisions are given below in detail :—

The preamble declares that (1) the Sudan which “were in rebellion against the authority of His Highness the Khedive” has been “reconquered” by “the joint military and financial efforts” of the British and the Egyptian Governments ; (2) the British Government desires to give effect to the claim which have accrued to them “by right of conquest”, “to share

1. *Op. cit.*—p. 382.

2. *Op. cit.*—p. 550.

in the present settlement and future working and development" of the system of administration and legislation of the Sudan ; and (3) that "due allowance must be made for the backward and unsettled condition of large portions" of the country, and "the varying requirements of different localities". The parties, thereupon, agreed to govern the Sudan in accordance with the system set up by the 12 Articles of the Convention. Art. 1 defines the territories of the Sudan. Art. 2 lays down that both the Egyptian and the British flags will fly over the Sudan. Art. 3 declares that the "supreme military and civil command in the Sudan shall be vested in one officer, termed the "Governor-General of the Sudan". As to his appointment the same Article lays down that he is to be "appointed by Khedival Decree on the recommendation of Her Britannic Majesty's Government, and shall be removed only by Khedival Decree, with the consent of" the British Government. By Art. 4 the Governor-General has been empowered to make, alter or abrogate by proclamations any law, order or regulation, necessary for the good government of the Sudan. Such proclamations must be forthwith notified to the British High Commissioner at Cairo, and to the President of the Egyptian Council of Ministers. But the Convention does not say anything as to whether the British High Commissioner or the Egyptian Prime Minister can forbid or abrogate any such proclamation. By Art. 5 Egyptian laws or Decrees have been deprived of their jurisdiction in the Sudan except in so far as they are applied by the Governor-General by proclamations. Art. 6 has abolished all capitulatory rights of foreigners in the Sudan. By Art. 7 goods coming from the Egyptian territory are exempted from the payment of import duties ; but those entering the Sudan "at Suakin or any other part on the Red Sea littoral" are not to pay more duties than what are "leviable on goods entering Egypt from abroad." But the Sudan retains the right of imposing any export duty by proclamation. By Art.

8 of this Convention and by Art. 1 of the Agreement of July 10, 1899, (amending the former), the whole of the Sudan was relieved from the jurisdiction of the Mixed Tribunals which continue to be the curse of Egypt up to this day. Art. 10 declares : "No consuls, vice-consuls or consular agents shall be accredited in respect of, nor allowed to reside in, the Sudan without the previous consent of Her Britannic Majesty's Government." This shows that in the Sudan Great Britain enjoys more power than Egypt, under the very terms of the Convention. Art. 11 strictly forbade all slave trade, while Art. 12, the last Article, declared the intention of the two Governments to enforce "the Brussels Act of July 2, 1890, in respect of the import, sale and manufacture of fire-arms and other munitions and distilled or spirituous liquors."<sup>1</sup>

As to the validity of this Convention diverse opinions are held. It cannot be disputed that before 1899, Turkey was the legal sovereign of Egypt and the Sudan. The Firmans of 1866, 1873 and 1879 clear up the point without any shadow of doubt. By the Treaty of Berlin, the European Powers agreed to preserve the integrity of the Ottoman Empire. The Firman of 1892 asserted the Ottoman sovereignty over the Sudan again. When the British Government leased out Equatoria and Bahr-el-Ghazel (portions of the Sudan) to Belgium in May, 1894, France protested against the action on the ground that the sovereignty over the Sudan belonged to the Sultan. In 1896, Great Britain herself emphasised the Ottoman sovereignty over the Sudan in the Fashoda incident. Lastly, the hoisting of the Turkish and British flags by General Kitchener on September 4, 1898, shows conclusively that Turkish sovereignty over the Sudan was admitted by Great Britain. The Sudan was, therefore, never a *res nullius*.

1. For the Text of the Conventions of 1899, see *Brit. & For. St. Paps.* Vol. XCI, p. 19 ; *Hertslets Commercial Treaties*, Vol. XXI, pp. 359-9 ; also *Peace Hand-Books*, op. cit. pp. 165-168.



It remained a province of Turkey throughout the 'sixteen years of Mahdist control.<sup>1</sup> In fact, the preamble to the Convention of 1899 also corroborates this when it says that only "certain provinces in the Sudan.....were in rebellion against the authority of His Highness the Khedive."

Under these circumstances, can it be asserted that the Convention of 1899 was a legally valid document? I doubt. The Firmans of 1879 and 1892 definitely prohibited the Khedive to alienate or divide the Turkish sovereignty over the Sudan, which was only delegated to the Khedive, or to share it with any other power "Sous aucun pretexte ni motif." Lastly, it must be remembered that the Sultan, the moment he heard about this Convention, protested against it.<sup>2</sup> The Convention was, therefore, not legally valid. But the Government, established by this Convention, continued to operate under the name of an Anglo-Egyptian Condominium, of which Great Britain was the predominant partner, but both parties professing to be under the nominal suzerainty of Turkey. England herself was powerful enough to annex the Sudan to her empire, and to sweep aside any Egyptian claim to share in the government of this country. But the reasons why the Condominium was set up are given by Lord Cromer, the father of this Convention, as follows:— Firstly, "Egypt had played a very useful and honourable, albeit auxiliary, part in the joint undertaking....In the second place, the campaign had throughout been carried on in the name of the Khedive." Thirdly, the British responsibilities "were already world wide" and it was not safe to assume "the direct government of another huge African territory." Fourthly, "British influence should in practice be paramount in the Sudan in order that the Egyptians should not have conferred on them a 'bastard freedom', to repeat, the mis-

1. For a different opinion, see V. A. O'Rourke—*The Juristic Status of Egypt and the Sudan* (1934) p. 150.

2. Cromer—*Op. cit.* Vol. II, p. 118.

government of the past." Fifthly, "the baneful regime of internationalism," through the capitulations should not be introduced in the Sudan; Lastly, "annexation" should be overruled on grounds of "equity and policy."<sup>1</sup> Hence the policy of the Condominium—"a pardonable fiction," as Cromer calls it, by which was asserted "a valid title to the exercise of sovereign rights in the Sudan by the Queen of England in conjunction with the Khedive." Cromer only forgot to note that the Condominium might enjoy and assert a *de facto* sovereignty over the Sudan, but *de jure*, the position was not maintainable.

This Condominium under Turkish suzerainty continued up to 1914. The only important innovation in the machinery of government was the creation in January 1910 of the Governor-General's Council. During this period there were a dozen or more fanatical outbreaks, which were quickly suppressed. For internal administration the country was divided into 15 provinces, besides the military district of Sobat Pibor. The lines of division coincided more or less with the tribal groupings. The Sudanese administrative system will however be dealt with later on. On November 7, 1914, Turkey declared war against the Allied Powers. This led Great Britain to proclaim a British Protectorate over Egypt on December 18, 1914.<sup>2</sup> The Khedive Abbas Hilmi was deposed and Prince Hussein Kamel Pasha was proclaimed the Sultan of Egypt. The British explanatory note addressed to Sultal Hussein declared: "From the facts set out it results that the rights over the Egyptian Executive, whether of the Sultan (Ottoman) or the ex-Khedive, are forfeited to His Majesty". Thus Great Britain became the Protector of Egypt as well as of the Sudan. From 1899 to 1914, the Ottoman Sultan was the *de jure* sovereign,

1. Cromer—*Op. cit.* Vol. II, pp. 113-114.

2. *Brit. & For. State Paps.*—Vol. CIX (1915) p. 437.

though Egypt and Great Britain were the joint sovereign *de facto*. After December 18, 1914, Great Britain became the *de jure* and *de facto* sovereign over both Egypt and the Sudan.<sup>1</sup> The Convention of 1899 became almost a dead letter. From 1914 to 1922 (Feb. 28), the Governor-General as well as other British and native officers in the Sudanese administration were appointed solely by the British Government, brushing aside all Egyptian voice. On February 28, 1922, the British Government made the famous Declaration of Independence of Egypt, subject to four reservations, the last one of which was the Sudan, where "pending the conclusion of such agreements, the *status quo* in all these matters shall remain intact."<sup>2</sup> The important point to be noted is what is this *status quo* referred to? Is it the status which prevailed before the Protectorate of 1914 or after it? Mr. Lloyd George's statement made in the House of Commons, simultaneously with the Declaration of February 28, 1922, throws some light on this point. The British Prime Minister said:—"His Majesty's Government could not agree to any change in the status of that country (the Sudan) which would in the slightest degree diminish the security of the many millions of British capital which are already invested in its development. Egypt, on the other hand, has an undeniable right to the most ample guarantees that the development of the Sudan shall never threaten or interfere with her existing water supply or with that which she may require to bring her own territory under full cultivation."<sup>3</sup> It appears clear, therefore, that the status of Egypt is not that of an equal partner in a Condominium. Egypt can only claim and be

1. Of course, it was only in July, 1923, by Art. 17 of the Treaty of Lausanne that Turkey formally renounced all her rights and titles over Egypt and the Sudan—Vide *supra* p. 36.

2. *Cmd.* 1592 of 1922.

3. Quoted in *Great Britain & Egypt*—Information Dept. Papers, No. 19, p. 57.

assured of some water supply ; that is all. Her position deteriorated from that of a joint sovereign to that a tenant under the British land-lord. Even this right to water supply could be, as it was actually in 1924, threatened. Secondly, the Egyptian Constitution of 1923 was so framed under British pressure as not to refer to Egyptian sovereignty, either absolute or joint (in the real sense of the term), in the Sudan. Zaglul claimed the Sudan to be an indivisible part of Egypt on the following grounds :—(1) The Sudan has a community of language and religion with Egypt. (2) It was conquered in 1820 by the Egyptian Mehmet Ali, and in 1899 by Egyptian money and Egyptian forces with British help ; (3) that the Convention of 1899 was never intended to affect Egyptian sovereignty over the Sudan. But Zaglul's attempts did not succeed. Mr. Ramsay Macdonald, the Labour Premier, sent a despatch to the British High Commissioner on October 7, 1924, which contained the following :—“.....The duty of preserving order in the Sudan rests, in fact, upon His Majesty's Government, and they will take every step necessary for this purpose. Since going there they have contracted heavy moral obligations by the creation of a good system of administration ; they cannot allow that to be destroyed ; they regard their responsibilities as a trust for the Sudan until their work is done. His Majesty's Government have no desire to disturb existing arrangements, but they must point out how intolerable is a *status quo* which enables both military and civil officers and officials to conspire against civil order”.<sup>1</sup> In the same year Great Britain concluded with France a protocol by which the frontiers between Equatorial Africa and the Anglo-Egyptian Sudan were delimited without any reference to Egypt.<sup>2</sup> Again on August 17, 1924, a Note from the British Government to the Egyptian

1. *Cmd.* 2269 of 1924.

2. *Brit. Treaty Series*, No. 28 of 1924.

Government pointed out that in virtue of the Convention of 1899, Great Britain considered herself responsible for the maintenance of order in the Sudan.<sup>1</sup> It is thus clear that the *status quo* was the post-war and not the pre-war one. The Note of August 17, 1924, is a foolish one, for under the Convention, the British Government can at most "share in the present settlement and future working and development" of the Sudanese administrative system. But the British Government cannot consider itself as the only power responsible for law and order in the Sudan. For that, the proper authority is the Governor-General, an official appointed jointly by Egypt and Great Britain.

However, an unfortunate incident occurred on November 19, 1924. Sir Lee Stack, the Governor-General and Sirdar or Commander-in-Chief of the Sudan, was murdered in Cairo, by some Egyptians. The British Government at once took retaliatory measures, demanded a huge blood-money, "unworthy of British traditions"<sup>2</sup>; and the withdrawal of Egyptian troops from the Sudan. It threatened Egyptian cultivation by extending "the area to be irrigated in the Gezira district of the Sudan". Egyptian resistance to the conversion of the Sudanese units of the Egyptian Army into a separate Sudanese Defence Force was broken down, and even the Egyptian Customs Houses at Alexandria were forcibly occupied by the British forces to compel the Egyptian Government to yield to these demands. On December 15, 1924, Sir Austen Chamberlain, the British Foreign Secretary, declared in the House of Commons that the British were the trustees for the people of the Sudan. He added :—"We insist that we shall have therefore in the future *whatever authority is necessary* in order to discharge our duty and our responsibilities to the people whom we govern. We have no desire

1. *The Times*—August 18, 1924.

2. Valentine Chirol in the *Quarterly Review*—January 1925, p. 152.

to terminate the Condominium. If.....the Government of Egypt will work with us, we will recognise it and be loyal to it"<sup>1</sup>, a statement as irrelevant and senseless as the Note of August 17, 1924. What the British Government was actually demanding was that Egypt should forfeit her equal share in the administration of the Sudan and simply ditto in every British action, and thereby occupy a subservient position though by the terms of the Convention she was quite justified to assert that half of the sovereignty which belonged to her as of right. The Condominium in the Sudan, as understood by the British, had nothing in common with Anglo-French Condominium over New Hebrides, where as Oppenheim points out "there is in law a division of sovereignty".<sup>2</sup>

However, this peculiar position continued for many years and the Condominium turned out to be a farce. Negotiations were held in 1927, 1929 and 1930, between the two Governments, but the Sudanese problem remained insoluble. Thus, in the Henderson-Nahas negotiations of March 31, 1930, the British Government insisted that the future status of the Sudan "shall be that resulting from the said Conventions" of 1899. The Egyptian delegation, on the other hand, demanded an absolutely free determination of the status of the Sudan, not bound by or based upon the Conventions of 1899. Later on, Nahas Pasha, the Wafdist leader, agreed to accept the British stand-point, provided (1) that the negotiations for concluding new Conventions were started within "one year from the ratification of the present treaty"; and (2) that the immigration of the Egyptians into the Sudan would be subject to no restrictions; and (3) that the nature of the Convention of 1899 would be determined by an impartial tribunal, notably the League of Nations, within a year. The British Government, however, refused point

1. *Brit. Par. Debates Series*—Vol. CLXXIX, pp. 666-667.

2. Oppenheim—*International Law*, Vol. I (1937), p. 352.

blank the last two demands.<sup>1</sup> The deadlock continued for five more years, when suddenly in 1935, the Italian invasion of Abyssinia put the security of Egypt in great danger, and compelled her to seek British protection. The British Government did not miss this opportunity, and after various negotiations between the two delegations which met at Cairo on March 2, 1936, the Sudan clauses of the Anglo-Egyptian treaty were initialled on August 1, 1936. The treaty was signed on August 12. The Sudan is dealt with in Art. 11. On the whole, the British yielded less than before. Art. 11 contains the following points :—(1) Nothing in the Article prejudices the question of sovereignty over the Sudan. (2) The parties reserve to themselves full liberty to conclude new Conventions in future modifying the agreements of 1899. (3) "The administration of the Sudan shall continue to be that resulting from the said agreements." (4) The Governor-General shall be appointed in the sameway as before. (5) The primary aim of the Sudanese administration must be the welfare of the Sudanese. (6) Appointments and promotions of officials in the Sudan will be made by the Governor-General. (7) Qualified Sudanese must be given preference in making new appointments. (8) When qualified Sudanese are not available, suitable candidates of British and Egyptian nationality are to be selected. (9) In addition to Sudanese troops, both British and Egyptian troops are to be placed at the disposal of the Governor-General for the defence of the Sudan. (10) Egyptian immigration into the Sudan shall be unrestricted except for reasons of public order and health. (11) International Conventions shall be made applicable and non-applicable in the Sudan only by the joint action of the British and the Egyptian Governments. (12) The Governor-General is to furnish the two Governments with annual administrative reports,

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1. For the negotiations and the Draft Treaty, see *Cmd.* 3575 of 1930.

and to notify directly to the President of the Egyptian Council of Ministers all Sudanese legislations. (13) "Promotion and advancement of members of the Sudan Service shall be irrespective of nationality up to any rank by selection in accordance with individual merits.<sup>1</sup> (14) In the absence of qualified Sudanese, British or Egyptian subjects, persons of other nationality might be appointed. (15) The Governor-General in consultation with the Egyptian military officers was to determine immediately the number of Egyptian troops to be stationed in the Sudan.<sup>2</sup> It is, thus, clear that this Treaty of 1936 has actually revived the real spirit of the Condominium of 1899. It is now easier for Egypt to prevent Great Britain from arrogating to herself the lion's share of the sovereign rights of the two parties over the Sudanese administration.

### The Government of the Sudan

The Government of the Sudan is, therefore, based upon the Anglo-Egyptian Agreements of January 19, 1899, and July 10, 1899, and the Anglo-Egyptian Treaty of 1936, Article 11 annex to Art 11, and the Agreed Minute (para XIV-XVI to the Treaty).

The chief legislative and executive authority in the Sudan is the Governor-General. He is also the supreme military Commander of all the forces in the country. He is appointed by a Decree of the King of Egypt on the recommendation of the British Government, and can be removed by a similar Decree with the consent of the British Government. No Governor-General can be appointed without the concurrence of the King of Egypt. This constitutional position is very interesting. Thus, when Sir Geoffrey Archer, the Governor-General of the Sudan, offered his resignation, Sir

1. Para XV of the Agreed Minute to the Treaty.

2. For the text of the Treaty, see *Cmnd.* 5270 of 1936.



Austen Chamberlain, the British Foreign Secretary, remarked in the House of Commons on July 12, 1926, that this "resignation does not become effective.....without the concurrence of King Fuad," while for the appointment of another Governor-General, Sir Austen remarked that "the concurrence of King Fuad *must* be obtained".<sup>1</sup> The Governor-General has full legislative powers, which he exercises through Proclamations, (for details see Art 4 of the Convention of Jan. 19, 1899). In the discharge of his legislative and executive power, he is assisted, since January 1910, by a Council "created on the analogy of the Executive Council of the Governor-General of India, consisting of four ex-officio members and from two to four others appointed by him".<sup>2</sup> The Governor-General's Council is composed of :—(1) The Financial Secretary ; (2) the Kaid El' Annm ; (3) the Civil Secretary ; (4) the Legal Secretary, and two to four other members, all appointed by and responsible to the Governor-General. The decisions of the Governor-General-in-Council are issued as Sudan Ordinances and operate as laws. Though they are notified to the Egyptian Government, yet the latter has no power to amend or alter them. The annual budget and supplementary credits are put before the Governor-General in Council for their sanction. But the Governor-General can overrule his Council in every matter. Appointments and promotions in the Sudan Government Service and all military matters are excluded from the competence of the Council. Other matters may be referred to the Council if the Governor-General so desires. The relation of Egypt in the Sudanese administration is restricted to approval and audit of the annual Sudan budget ; in all other respects, Khartoum is independent of Cairo.

For the purpose of central administration, there are the

1. *Br. Par. Debates*, Series V, Vol. CXCVIII, p. 26.

2. *Peace Handbooks*, *op. cit.*, Vol. XVI, No. 98, p. 59.

following Departments, each under a Secretary or a Director : (1) Finance, (2) Civil Department, (3) Legal Department, (4) Agriculture and Forests, (5) Customs, (6) Medical Department, (7) Posts and Telegraphs, (8) Public Works, (9) Survey, (10) Veterinary, (11) Education and Health. Besides these, there is the Irrigation Department, under an Adviser ; the Railways, under a General Manager, and the Audit Department, under the Auditor-General. All these departmental heads and their immediate subordinates are British.

For the purpose of local administration, the country has been divided into fifteen provinces :—(1) Halfa, (2) Dongolla, (3) Khartoum, (4) Berber, (5) Blue Nile, (6) White Nile, (7) Upper Nile, (8) Sennar, (9) Red Sea, (10) Kassala, (11) Kordofan and Nuba mountains, (12) Mongalla, (13) Bahr-el-Ghazal, (14) Darfur, (15) Fung. Each province has at its head a Governor who is generally assisted by a Deputy Governor. The provinces are again subdivided into districts, each under a District Commissioner, assisted by Assistant District Commissioners. All these officers are again British, and are appointed by and responsible to the Governor-General. The Provincial Governors are the Governor-General's agents or delegates in the provinces carrying out his orders, enforcing laws, collecting the revenues, and securing the impartial administration of justice. They possess very wide powers and enjoy considerable latitude of action. Between the Governors and the District Commissioners are the Senior Inspectors, like the Divisional Commissioners of India, recruited from the rank of the Sudanese Civil Service. Below the District Commissioners are the Mamurs and Sub-Mamurs, Egyptian or Sudanese in nationality, exercising functions of lower magistracy and police. Before 1920, there were practically no complicated native institutions between the Governor-General and the Sudanese people. But since that year, native officials, customs, institutions, etc.,

have been increasingly made use of in the administration of the country. As a writer points out :—"This new policy appears to be startlingly successful. Native administration will not be, of course, as efficient as direct administration, but the British accept that in the belief that in the long run it will be more valuable to the people."<sup>1</sup> Though the Government is thoroughly autocratic in principle, yet it must be admitted devolution and decentralisation are gradually becoming the key-note of the British policy in the Sudan.

### Judiciary

Native customs, traditions, etc., have been retained in Moslem personal matters. But the judicial system, on the whole, has been much affected by European ideas. Various Codes, (e. g. the Sudan Penal Code, the Code of Criminal Procedure) have been formed on the Indian model. In each district, there is a district Court. Above them are the Provincial Courts. The highest Court is the Court of Appeal (High Court) at Khartoum, composed of a British Chief Justice and five other British Judges. It has both an appellate and an original jurisdiction. It does not, however, entertain any appeal in criminal cases. In civil cases, when the relief claimed amounts to more than £E. 50, appeals lie as a matter of right ; in other cases, by way of revision. One High Court Judge is stationed in each of the five following provinces, viz. Khartoum, Kassala, Gezira, Kordofan, and the Northern Province. There is a Province Judge in each of the other Provinces. The Governor of a Province acts as the Province Judge when no special Province Judge has been appointed there. Similarly, the District Commissioners act as District Judges when these posts are not filled up. Criminal cases are heard by Magistrate's Courts, which are divided into two classes, Major Courts and Minor Courts. Serious cri-

1. Odette Keun—*A Foreigner Looks at the British Sudan*, in the *Nineteenth Century*, September, 1930, p. 299.

minal cases decided by the former require the confirmation of the Governor-General, while those decided by the latter, require the confirmation of the High Court Judge or the Governor. The Judges of the High Court are appointed as Circuit Judges in their provinces and hear appeals from the Magistrate's Courts within their Circuit. Besides these, there are Shara Courts, presided over by the Kadis administering Moslem religious laws in cases of Moslem succession, marriage, divorce, guardianship, wakfs, etc. All these Kadis are under the supervision of a Grand Kadi. Tribal laws are recognised "so far as applicable and not repugnant to justice, equity and good conscience." The jurisdiction of native Sheikhs and Chiefs recognised or appointed by the Government, remain as before.

Sudan has immensely prospered under the administration of the Condominium. The Sudanese Civil Service is quite an efficient and honourable body actuated by high and selfless devotion to duty. As Arthur Merton says:—"No better example of 'government by consent of the people' could indeed be found than that afforded by the present administration of the Sudan; and the little band of Englishmen to whose capacity, devotion and personality this remarkable regeneration of the 'Land of the Blacks' is entirely due constitute undoubtedly one of the finest civil services the world has ever seen."<sup>1</sup>

From the very beginning, the British Government had enunciated and resolutely stuck to three fundamental policies with regard to Sudanese administration:—(1) That the Sudanese owner must be left in possession of his land, even when this land can grow cotton, etc.; and that the Sudanese cultivator must be given seed, water, technical vision and yet left complete master of himself; (2) that the British small settler or trader must not be allowed to compete with and

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1. Arthur Merton—*The Nineteenth Century*, Sept, 1924, p 440.

oust the natives ; and (3) that no forced or unpaid labour of any kind, should be exacted from the natives.<sup>1</sup> The record of British administration in the Sudan is not, therefore, the same as the record of the French administration in Algeria or the Belgian administration in the Congo, or the German administration in West Africa. The revenues of the country have gradually increased from ££. 35,000 in 1898, to ££.2,255,000 in 1918, to near about ££. 500,000,000 in 1940. Direct taxation yields ££.312,436 ; Royalties, ££.244,974 ; Customs, ££.774,936 ; Railways ( nett profit ) ££.497,500 ; and Posts and Telegraphs ££. 150,483.<sup>2</sup> Native education is absorbing more and more attention of the Government. The Kitchener School of Medicine is turning out well trained native doctors ; the Gordon College, teachers, engineers and capable officers for the minor posts in the administration. Big irrigation projects like the Sennar Dam and large scale plantations, like the Gezira, have developed the wealth of the country. It may be that Egypt will demand a larger share in the administration of the Sudan. But one cannot disagree with the ex-Khedive Abbas Hilmi II, when he says that "up to this day no better proposition has been made" for the administration of the Sudan than the Anglo-Egyptian Convention of 1899.<sup>3</sup>

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1. For the land system of the Sudan, see Annual Administration Report. *Cmd.* 6149 of 1912, p. 52.

2. *Statesman Year Book*, 1940, p. 256.

3. Abbas Hilmi II,—*The Anglo-Egyptian Problem* (1930,) p. 23.

## CHAPTER IV

### I R A N

The Persian Constitution is one of the most wonderful political documents of the world. Constitutional writers of the West might have had reasons in the past to ignore the history of its development. But how the people of the East could have left such an important factor in the growth of democracy in the Asiatic continent unnoticed and uncared for, is really a mystery. But things have changed too fast and as M. Nakhai writes : "L'apretè de la lute a montré à suffiance l'importance que l'Europe attachait a la Perse comme factur economique de la vie internationale. Aujourd'hui les peuples de l'Occident recherchent l' Iran comme une alliée precieuse dans leurs combinaisons politiques"<sup>1</sup> Before Reza Shah Pahlevi, Europe had a Persian politics ; to-day, Iran has a European politics. The East has, however, a greater interest in Persian politics than the West, for not only the Persian Constitution of 1906-7 is the first democratic Constitution of the East, but also Iran, by her special position in the map of Asia, is the real centre of the Old World, maintaining a necessary equilibrium between European imperialism and Russian communism. Further, as Mohammad Essad-Bey points out : "Reza Shah's gigantic plan transcends the narrow circle of Persian domestic politics and bids fair to develop into a deciding factor in pan-Asiatic foreign relations".<sup>2</sup> Therefore, Persian politics deserve more careful attention than it has hitherto received in the East.

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1. *L' Evolution Politique de l' Iran*, p. 115.

2. *Reza-Shah* 1938, p. 209.

This beautiful plateau of 628,000 sq. miles, bordered on the north by the crooked paw of the Russian bear and the blue waters of the Caspian Sea, on the west by Turkey and Iraq, on the south by the Persian Gulf and the Gulf of Oman, and on the east by Afghanistan and British Baluchistan, is inhabited by a most ancient race of predominantly Aryan strain—15,000,000 souls, more than 90 per cent. of whom belong to the Shia sect of Islam. Besides the Shias there are at present 850,000 Sunnis; 10,000 Parsis; 40,000 Jews; 50,000 Armenians and 30,000 Nestorians,<sup>1</sup> besides some Christians belonging to the foreign legations and missionary societies. In studying the political history of the Persians, it is very necessary to remember the famous saying of Gobineau: "L'Iran est un de ces gros blocs chus des montagnes au milieu d'un torrent qui peut l'user sur ses bords et le soulever un moment, mais le bloc retombe aussitôt immobile sur sa masse." Indeed, the Arab conquest failed to stamp out the ancient Iranian culture, and even as late as 1920, both the British and the Russian diplomacy had to acknowledge defeat before the unbending will of Iran to preserve her national independence, her ancient culture and her individuality. I am not, however, much concerned with her cultural development. I propose to give here a brief outline of the political factors that brought about the great Constitution of 1906.

By the year 1881 Russia had annexed a number of frontier regions of Persia, while in the East the creation of British Baluchistan in the hitherto "no man's land" completed the encirclement of Persia. The opening of telegraph lines by foreign companies on Iranian soil and the import of western political ideas created an agitation in Iran, but the failure of Constitutional Government in Turkey in 1876 made the Shah, Nasir-Ud-Din, more and more unyielding to popular demands. After the latter's assassination in 1896, Muzaffar-

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1. *Statesman Year Book*, 1939, p. 1042.

Ud-Din ascended the throne ; but as he was quite an incapable and reckless ruler, violence and anarchy broke out in many parts of his empire. The Persian monarchs had almost failed to weld the diverse tribal chiefs and members into one homogeneous nation under a powerful Central Government. As Muhammad Essad-Bey writes : "Until the Phalavi Cap was decreed (1927), there really were no Persians ; there were Bakhtiari, Ghashghais, Lurs, Turkomans, lowly peasants, proud feudals—an utterly bewildering conglomeration of castes and cultures, but Persia as a nation existed on paper only".<sup>1</sup> Further, the economic misery of the people accelerated the pace of political disintegration. Even the great pan-Islamist Jamal-Ud-Din vehemently criticised the corrupt Vizier, while Prince Malkolm, the Persian Minister in London, strongly advocated a Parliament for Persia. The appointment of the arrogant and ignorant Abdul Hamid as Aynu'd-Dawla ( Minister of the Interior ) in 1903, and as Sadr-i-Azam ( Prime Minister ) on January, 24, 1904, was greatly resented by the people. The appointment of M. Heynssen and then of M. Naus—both Belgians—as Director-General of Customs and subsequently also as Minister of Posts and Telegraphs, High Treasurer, and a Member of the Supreme Council of State, evoked condemnation from the people, especially when M. Naus began to impose and realise the customs dues quite arbitrarily. At this period, the Shah was also contemplating huge loans from Russia and England in exchange of valuable national concessions. The abortive Russian Revolution of 1905 also aroused the political consciousness of the educated section of the people. In the early months of 1906, Persia suffered a severe financial dislocation. Owing to the high price of silver, the silver coins of Persia were exported out of the country which was flooded in turn by the paper notes issued by the Imperial Bank of Persia,

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1. *Op. cit.* p. 191.



an English concern, having the monopoly of note-issue. Lastly, bread-riots broke out all over the country.

Up till now, the people had demanded simply the removal of the Aynu'd-Dawla and the Belgian customs officials. In December 1905, the Shah had issued a *dast-khatt* or autograph letter to the *bastis* (or seceders from the capital) requesting them to come back to the town and "promising to dismiss the *Aynu'd-Dawla* ; to convene the '*Adulat-khanu*' or 'House of Justice,' which they now demanded and which was to consist of representatives elected by the clergy, merchants and landed proprietors, presided over by the Shah himself ; to abolish favouritism, and to make all Persian subjects equal in the eye of Law."<sup>1</sup> But in reply to a report published from St. Petersburg, expecting fearful consequences from this reform, the Persian Legation in London published on Feb. 2, 1906, a *dementi* "declaring that the nature of the proposed 'House of Justice' had been entirely misunderstood, and that it was intended to be a purely Judicial Court, not a Legislative Assembly." For several months, the Shah went on heedless of the popular demands and suppressing all constitutional agitations. Great leaders like Sayyid Abdullah, Sayyid Muhammad, Aqa Sayyid Jamal, Sheik Muhammad, etc., began to denounce autocracy, while various secret societies, notably the Anjumani-Makhfi, and national libraries, especially the Kitab-khana-i-Milli, began to preach sedition. The number of refugees (*bastis*) gradually increased from 800 in July to 14,000 in August, 1906, in the British Legation.

At last, on August 5, 1906, the Shah, Muzaffar-Ud-Din, issued a Firman or Royal Proclamation, authorising the establishment of a National Assembly. The Firman said : "We do enact that an Assembly of delegates elected by the Princes, the Doctors of Divinity (Ulama) the Qajar family (the Royal family), the nobles and notables, the land-owners,

1. E. G. Browne : *The Persian Revolution, 1905-1909*, p. 141, (1910),

the merchants and the guilds shall be formed and constituted by election of the classes above mentioned, in the capital Teheran ; which Assembly shall carry out the requisite deliberations and investigations on all necessary subjects connected with important affairs of the State and Empire and the public interests ; and shall render the necessary help and assistance to our Cabinet of Ministers in such reforms as are designed to promote the happiness and well-being of Persia ; and shall with complete confidence and security, through the instrumentality of the first Lord of the State, submit their proposals to us, so that these, having been duly ratified by us, may be carried into effect." The Firman also gave orders to the Prime Minister to "arrange and prepare a code of regulations and provisions governing this Assembly and likewise the ways and means necessary to its formation, so that by the help of God Most High this Assembly may be inaugurated and may take in hand the necessary reforms." The text of this Firman was published and proclaimed.

On August 19, 1906, the House of Parliament was officially opened with all solemnity, in the presence of high ecclesiastical authorities who were entertained as the Shah's guests for three days. But on September 8, the Mullahs refused to accept the ordinances drafted by the Prime Minister for the constitution of the Majlis (Assembly) and demanded that : (1) Persia should be divided into eleven (or 13) areas ; (2) that the Majlis should consist of 200 members ; and (3) that any male person between the ages of 30 and 70, being neither a Government servant nor a convict but able to read and write, should be eligible for membership. The Committee appointed for drafting the Electoral Law (Nizam-nama-i-Intikhavat) had completed its labours, and the great Electoral Law was passed on September 9, 1906. Its most important provisions were as follows : The electors of the realm were divided into six classes : (i) Princes and the Qazar tribe ;

(ii) Doctors of Divinity and students ; (iii) Nobles and Notables ; (iv) Merchants ; (v) Landed proprietors and peasants ; (vi) Trade guilds (Art. I). The electors were to be at least of 25 years of age, Persian subjects and known in the locality. Women, minors, foreigners, bankrupts, convicted persons and those who were serving actually in the land or sea forces, were deprived of the right to vote (Arts. 2 & 3). The number of deputies were not to exceed 200 (Art. 8). The deputies must be males, speak the Persian language, be able to read and write, be Persian subjects of Persian extraction, must not be in Government employment, or less than 30 or more than 70 years of age. Of the 60 seats allotted to Teheran, princes and members of the Qazar family had 4 ; doctors of divinity and students, 4 ; merchants, 10 ; landowners and peasants, 10 ; trade guilds, 32 in all, one from each guild (Art. 6). In the provinces, there were to be twelve electoral areas, some of them sending 6, others 12 members, each. But elections in the provinces were indirect. Each elector had one vote and could vote only in one class. By Article 19, the deputies of Teheran, when elected, could proceed to discharge the functions of the Assembly immediately without waiting for the arrival of the provincial deputies. This provision was included in the electoral law because, as Browne points out, the people thought it to be waste of time to wait until the arrival of the provincial deputies, while in the meantime the Shah might change his mind and revoke the Rescript.<sup>1</sup> The living expenses and annual allowances of the deputies were to be determined by the Assembly (Art. 20). The tenure of the Assembly was fixed at two years, after which "fresh elections should take place throughout the whole of Persia" (Art. 21). Article 23 guaranteed the personal freedom of the deputies from detention or arrest for their speeches or writings excepting those which are contrary to "public

1. *Op. cit.* p. 129.

good' and "against Islamic law." Art. 24 laid down that Government officials or employees could not be members of the Assembly unless they quitted their service.

The Assembly actually met in the building named 'Imarat-i-Khurshed' but, after three weeks, moved to Bahristan and began its deliberations on October 7, 1906. The Shah's speech from the throne was read out by the Nizam-ul-Mulk. On November 23, this new Assembly showed its independence by refusing to sanction a loan of £400,000 which the Shah was going to take from England and Russia, on the ground that it would endanger Persia's independence. The deputies from the provinces came in slowly. But it would be wrong to think that this National Assembly was a homogeneous body either in political aims or economic or social objectives. Victor Berard critically describes the composition of the first Assembly in these words: "L' Assembly elle-meme etait un champ de bataille entre les castes qui n'avaient fait alliance que pour defendre leurs privilèges respectifs contre le Roi. Du droit de leur science, de leur vertu et de leur dignite sacrée, le *mouchteheds* reclamaient le controle de toute discussion et meme de tout proposition legislative. Le bourgeois et le aristocrates ne voulaient que restaurer leur ancienne association avec le Roi, mais en entre le gerants et administrateurs-delegues. Seuls, quelques *mirzas* politiques et quelques jeunes reformistes entendaient gouverner sur le modèle de l'Europe occidentale et non sur les traditions iraniennes ou musulmanes. Aucun de parties n'avait une conception tres nette de son ideal de gouvernement"<sup>1</sup> It resembled the States-General of France more than a real popular assembly. But there was one common agreement amongst all these diverse groups and interests and that is—they were all constitutionalists. They all wanted to be governed in accordance with known principles of Law.

1. *Revolution de la Perse*—(Paris, 1910), pp. 353-54.

The Assembly began to determine the Fundamental Law of the Constitution (Qanun-i-Asasi), whose draft was published by the end of October, and which was finally ratified on December 30, 1906, by the Shah—just five days before his death. It was also signed by the Crown Prince, Muhammed Ali Mirza, who promised not to dissolve the existing Majlis for at least two years.

After the death of his father, the new Shah was crowned on January 19, 1907. But he disliked the constitution granted by his father, suspected the Majlis, did not invite the deputies to be present at his coronation, and under his instructions the responsible minister refused to appear in the Assembly and answer questions. But on October 7, 1907, he was compelled to ratify the Supplementary Constitutional Law. He secretly tried to obtain loans from the English and the Russians, incited some chiefs (e. g. Rahim Khan) to remove by violence all prominent members of the National Party in Ajerbaijan, and bribed some reactionary *mujtahids* (e. g. Sheik Fazlu'llah-i-Nuri) to carry on propaganda against the National Assembly. For several months there were numbers of ministerial changes and political persecutions, and the Shah preferred to be "the King of a nation in foreign bondage rather than the constitutional monarch of a free people". On December 14, 1907, the Cabinet resigned, but on the 15th, the Shah imprisoned the Premier, and by a *coup d'etat* tried to dissolve the Majlis. The people rose in revolt. The Shah became nervous. He tried to intimidate the Persian people by securing the diplomatic intervention of Russia and Great Britain in his favour. After having fled from the city to the Bagh-i-Shah, he issued ordinances, declared martial law, arrested the national leaders, filled the streets with Cossack patrols and put Colonel Liakhoff, a Russian officer, in charge of his army. Bahrstan was bombarded, scores of people were killed, leaders were imprisoned, the press was gagged,

the constitution suspended. Russia tried to fish in troubled waters ; but England, realising the danger of Russian extension on the north and the genuine desire of the Persian people for constitutional government, insisted upon the Shah to grant his subjects some constitution when the Shah approached Great Britain for a loan. The revolt of the people at various centres took ominous shapes, and at the end of September, 1908, the Shah issued a rescript for the restoration of the Majlis with reduced powers. But on November 22, by another rescript, he cancelled the first one and declared flatly that he had "quite abandoned any idea of convoking a Parliament as the Ulemas had declared that such an institution is contrary to Islam".<sup>1</sup> But the most notable *mujtahids* of Karbala and Naajaf at once repudiated this false statement of the Shah and demanded an immediate restoration of the Majlis.

In January, 1909, violent agitations broke out at Rasht, Astrabad, Mashhad, Iur, Ispahan. The Shah's governments were overthrown in these places, and at last the victorious forces of liberation began to march upon the capital. The Shah in response to good counsels from Russia and Britain, agreed on May 10, 1909, to restore the old constitution without any alteration and to hold elections as soon as the New Electoral Law had been promulgated. In June, 1909, the new Electoral Law was signed by the Shah ; but it was promulgated on July 1, 1909. The number of Deputies was fixed at 120, while election by two degrees was prescribed for the whole of Persia (Art. 15), and by Art. 4 the age for franchise was lowered to 20 years. The people again began to disbelieve the king. Nationalist armies under Haji Aliquli Khan, the Sardar-i-Asad, and Mohammad Wali Khan, the Sipahdar-i-Azam, entered the capital on July 13, amidst cries of "Long live the Constitution" and for three days there was severe fighting with the Royalist troops and the Cossack

1. *Blue Book—Cmd.* 4581, pp. 208-9.

Brigade. On the morning of Friday, July 16, the Shah took refuge in the Russian Legation at Zarganda and in the evening of the same day the National Council consisting of the Nationalist leaders, the chief *mujtahids*, notables and as many members of the former Majlis as were then available, held an extraordinary meeting, deposed the Shah and chose his twelve year old son, Sultan Ahmed Mirza, as his successor, with the old trusted Azudu'l Mulk, the head of the Qazar family, as the Regent. The National Council also nominated the first Cabinet with the Siphadar as the Chief Minister and Minister of War, and set up a special Court, known as Malkama-i-Qazawat-i-Ali (the Supreme Court of Judicature) to try political offenders. The elections at Teheran were conducted on August 17, while a Directory of 20 members was appointed with extensive powers of control. On September 13, the Directory was increased in size to 40 members, but its function became restricted to those of an Advisory Council. On November 15, the new Parliament was opened with all solemnity in the presence of princes, the clergy, nobles and foreign representatives. The speech from the throne was read out by the Siphadar, which included, *inter alia*, an exaltation of the National Parliament, "won by the courage and endeavours of the people themselves," and an exhortation to the Representatives of the Nation and the Ministers of the Crown to "concentrate their attention on the reorganisation of the different departments of the State and the ordering of their formation according to the principles which prevail in civilised countries", for the comfort of the people and the strengthening of the Constitution.<sup>1</sup>

The subsequent working of the Constitution did not prove to be successful, and that was because there was no agreement as to the political or economic programme, and no expert knowledge of the principles of government. As Berard

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1. Vide Browne, *op. cit.* pp. 336-37.

wroté : "Le revolution persane n'est pas une victoire du pouvoir civil ou religieux sur le pouvoir militaire, une revanche du droit divin sur le sabre, une restauration d'un *mikado* sur un *chogun*, comme au Japon. Et ce n'est pas davantage un assaut des soldats contre la theocratie, comme en Turquie ou en Espagne. Le caractere dominant de cette revolution persane est que l' armee n'y a joué aucun role, ni pour ni contre le Roi : la garde royale n'a meme pas essayé de la defendre. La revolution parsane n'est pas non plus une revolte de idees modernes contre la tradition, comme dans la France de 1789, l'Allemagne de 1848, ou la Russie de 1904-1905. Et ce n'est pas davantage une reaction des sentiments nationaux contre la tyrannie de lois etrnagers, comme dan l'Espagne de 1810, l'Italie de 1830 á 1866 ou la Hongrie de 1849."<sup>1</sup> The king, a Qajar-Turkish in race and language, maintained himself on the throne with the help of a Russian general, a Cossack army and "par accord de duex ennemis anglais et russe." And hence the revolution cannot be regarded as proceeding from a political consciousness or preparedness of the people for full-fledged democratic government.

The nature of the Persian Constitution will be discussed in detail later. For the present, let us briefly describe the history of the political evolution of Persia up to 1935. The first Cabinet including the "two patrician heroes of the revolution,"<sup>2</sup> viz., the Siphadar as Premier and the veteran Bakhtiari chief, Sardar Asad, as Minister of the Interior, completely failed to solve the internal difficulties of the country that arose over the disbanding of the *Mujahidins*, who were soldiers of fortune. The Nationalists were divided into two parties, the Revolutionists (Inqelabian), and the Moderates. Sir Percy Sykes writes : "Unfortunately by its

1. *Op. cit.* pp. 11-12.

2. *Ency. Britan.* Vol. 17, p. 596.



activity, its violence and its secret organisation, the former party gained the ascendant. Nor were the leaders any wiser. Sirdar-i-Asad intrigued with the Revolutionaries and laid traps for Siphadar ; Taqizada, the leader of the Revolutionary Party, was anathematized by the *mujtahids* of Kerbala, whom he had unwisely defied, but was supported by the Sirdar. Assassination was employed by the revolutionaries to overawe their opponents. Ultimately Taqizada was forced to leave Teheran and Siphadar found it necessary to resign as also did the President of the Assembly, who was a moderate.”<sup>1</sup> The next Cabinet formed by the revolutionary party under Mustaufi-ul-Mamalik did not last long as public opinion was against it, and again Siphadar formed a Cabinet. The Regency became vacant on the death of Azad-ul-Mulk, and Nasir-ul-Mulk, who was then in England, was elected Regent by a large majority. In 1911 it was decided that foreign guidance was necessary for organising the various State departments, that Americans should reconstruct the financial department, and the Swiss, the police and the gendarmerie. In June, 1911, the ex-Shah made an abortive attempt to regain his throne, but his plan was nipped in the bud. The appointment of Mr. Schuster—an American—as financial adviser to the new Government was very much resented by the Russian Government who by an ultimatum demanded his immediate dismissal. The Majlis refusing to comply with the Russian ultimatum, several thousand Russian troops entered Persia and tried to march upon Teheran. The new Regent, Nasir-ul-Mulk, fearing a catastrophe, called the Cabinet and Yeprem Khan, the military leader of the revolutionary party, dissolved the Majlis on December 24, 1911, with their approval, and signified acceptance of the Russian demands. Mr. Schuster was dismissed and the financial administration was carried on with the help of the Belgian customs officers.

1. *A History of Persia*. Vol. II, p. 422.

Just before the War, the condition of Persia was almost chaotic. There were internal factions, financial instability, political confusions, economic poverty and external dangers. The National Assembly was not summoned until after war had broken out in Europe. In July 1914, the young Shah reached majority and was crowned. He summoned the Majlis, and in his speech from the throne declared the neutrality of Persia in the Great War. But soon this neutrality was most contemptuously violated by Great Britain, Russia and Turkey whose armies fought on the Persian soil and inflicted considerable damage on property. In March 1918, the British Government tried to impose an agreement upon the Persian Government which would secure recognition of the South Persian Rifles—an organisation formed by the British force in Southern Persia, and the maintenance of British troops in Azerbaijan until the end of the War. The Persian Government spiritedly refused all these demands, but after the victory of the Allies, the Shah dismissed the Cabinet which was hostile to the British, while the new Cabinet of Vosugh-ud-Dowla, friendly to the British, signed the notorious Anglo-Persian Agreement of 1919.

The Agreement reiterated the undertaking of the British Government "to respect absolutely the independence and integrity of Persia" (Art. 1). The British Government would supply, at the cost of the Persian Government, the services of experts required for the several departments of the Persian administration, on terms to be settled between the two parties (Art. 2), and such officers and munitions for the creation of a uniform force for the establishment of order in the country and on its frontiers (Art 4). For financing these reforms, the British Government offered to provide or arrange a substantial loan (£ 2,000,000 at 7% redeemable in 20 years) with adequate security in the revenues of the customs or other sources of income of the Persian Government (Art. 4),

while by Articles 5 and 6, the British Government agreed to develop communications in Persia, and to set up a joint Committee for revising the Persian Customs Tariffs. Almost all these conditions remind one of Japan's Agreement with Manchukuo.<sup>1</sup>

After the Armistice, a Persian delegation arrived in the Paris Peace Conference and published in a brochure its claims, divided into three parts, viz, (i) political—i.e, abrogation of the Anglo-Russian Agreement of 1907, and the withdrawal of consular guards and the abolition of consular courts, which Sir Percy Sykes described as “unpractical visions, in view of the risks that are constantly run by European subjects living in Persia”<sup>2</sup> ; (ii) territorial restorations (in the east Persia claimed Transcaspia, Merv and Khiva ; in the north-west, Caucasus up to Derbent, including Erivan, the chief centre of the Armenians, and Baku ; in the west, Asia Minor to the Euphrates, including the entire province of Kurdistan, Dierbeker and Mosul ; (iii) reparations, for the losses to life and property etc, due to the violation of her neutrality by Russia, Turkey and Great Britain. The delegation was not even allowed to put its case before the Peace Conference, and Persia came back humiliated and disgraced, though Great Britain expressed her desire to renounce her claims under the Anglo-Russian Agreement of 1907. The new Agreement of 1919 produced a country-wide agitation against it, and evoked suspicion abroad. It was not put before the League of Nations, and America and France naturally feared that Persia was going to be turned into Great Britain's “private preserve.”<sup>3</sup> When the Shah returned to

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1. For the text of this Anglo-Persian Agreement of August 9, 1919, see *Par. Pap.*, Persia, No. 1, (1919), *Cmd.* 300.

2. *Op. cit.* Vol II, p, 518.

3. For Franco-American opposition to the Treaty, see *The Foreign Relations of the United States* 1919, Vol. II, p. 711.

Persia from his European tour, the unpopular Cabinet of Vosugh fell and the new anti-British Cabinet refused to ratify the Agreement.

Meanwhile the Bolsheviks had overthrown the Government of the Tsar in Russia, and their forces of national liberation had crossed the northern borders of Persia. Their troops numbering over 9000, well-equipped with field artillery and machine guns, defeated the Cossack Brigade in March 1921 and advanced as far as Resht, threatening Teheran. But, suddenly, Bolshevik Russia changed her policy, withdrew all the Russian forces from Persia, opened negotiations with the Government of the Shah, denounced the Anglo-Russian Agreement of 1907, returned all territories conquered by the Tsar, and gave up all claims to former Russian loans to Persia or to extra-territoriality. The new treaty, establishing cordial relations between these two countries, was signed at Moscow on Feb. 26, 1921. The exchange of ratifications took place at Teheran on Feb. 26, 1922, and the treaty was registered with the League of Nations on June 7, 1922.<sup>1</sup>

On February 20, 1921, when there was confusion and chaos throughout the country, Reza Khan, a young officer of the Cossack Brigade, marched upon the capital with an army of 3000 Persian Cossacks, seized the Government, arrested the members of Siphadar's Cabinet, set up Dr. Zia-ud-Din as Prime Minister and himself became Minister of War. On February 26, 1921 the new Cabinet annulled the Anglo-Persian Agreement of 1919, while the treaty with Russia, referred to above, was signed on that very date. Dr. Zia-ud-Din wanted financial assistance from the British to stabilize the budget, but as Reza Khan had already managed to get the Gendarmerie transferred from the Department of the Minister of the Interior to the Department of the Minister of

1. Vide M. Nakhai, *L'Evolution Politique de L'Iran*, pp. 110-112.

War, that is himself, he became too powerful for the Doctor who fled to Baghdad for British protection.<sup>1</sup> The next Prime Minister was Mushir-ud-Dowlah, who also resigned as his policy towards the newspapers was opposed by the Shah. His successor, Khavan-es-Saltaneh, also came into conflict with the all-powerful Commander-in-Chief and had to resign. Therefore, Reza Khan himself became Prime Minister in 1923. By this time, the Shah was also feeling the dominant personality of the Prime Minister too incommensurable and left Persia, "apparently in fear of his life," for Europe, where he died in 1930.

In 1924, Persia was almost a Republic for the first time in her history, though not formally, with Reza Khan as its first President. All preparations were complete for declaring Persia a republic, following the example of Turkey. But the abolition of the Caliphate, the dis-establishment of Moslem religion and the expropriation of religious endowments created indignation in the minds of the devoted Shias and a revulsion of feeling against the Ottoman Republic. Reza Khan in sympathy with the feelings of the Ulemas, *Mujtahids* and influential merchants, adroitly changed his policy and declared a republican form of government to be against the Shia religion. The Majlis, though full of democrats, had great confidence in him and gave him dictatorial powers in 1925. The absentee Shah was deposed on October 31, 1925, by the Majlis, "in the name of the national welfare." On that very date the National Consultative Assembly met and the presiding Deputy read the following resolution: "In the name of the welfare of the people, the National Consultative Assembly declares the abolition of the Kajar dynasty, and within the limits of the Constitution and other laws, entrusts the Provisional Government to the person of Reza Khan. The determining of the form of the Permanent Government

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1. Vide *Contemporary Review*, February 1926, p. 196.

shall be made by a Constituent Assembly which shall, for this purpose, amend Articles 36, 37, 38 and 40 of the Supplement to the Constitutional Law." Of the 115 Deputies who were present, 80 voted in favour of, 5 against, this resolution, and 30 remained neutral. On the 12th of December, 1925, two hundred and sixty Deputies met in the National Constituent Assembly and passed the following resolution by 257 votes for and 3 neutral : "In the name of the people, the National Constituent Assembly herewith commits to Reza Shah, Sirdar-i-Sipah, and his descendants in the male issue, the constitutional monarchy of Iran, the eldest son of a Shah always to be heir-apparent. In case there is no male issue, the Shah himself shall choose his successor who in turn shall be approved by Parliament. No member of the House of Kajars can ever be a pretender to the throne. The Crown Prince is not to assume the reign until he is twenty-one years old. In case the heir-apparent is a minor, Parliament is to elect a regent but this regent too must not be a member of the House of Kajars. The Shah, the heir-apparent, and the regent must take an oath on the Constitution before Parliament." On December 15, the new Shah took the oath to defend the Constitution and on December 16, he was publicly proclaimed. On Feb. 25, 1926, he appointed his eldest son, Shahpur Mohammed Riza, Valiahd (Crown Prince) of Persia. On April 25, 1926, accompanied by the Crown Prince, and the Court Minister Teymourdash, Reza Shah entered the Gulistan Palace in Teheran, sat on the "Soldier's Throne" of Nadir, and taking the Crown from Teymourdash, put it himself upon his head.

### The Constitution of Persia

The Constitutional Law of Persia is to be found in the following documents : (1) The Imperial Rescript of August 5, 1906, which Sir Percy Sykes describes as the Magna Charta

of Persia ;<sup>1</sup> (2) The Constitutional Law of December 30, 1906, containing 51 Articles, passed in the reign of Muzaffar-ud-Din ; (3) Supplementary Constitutional Law, containing 107 Articles, published on October 8, 1907, in the reign of Muhammad Ali, with modifications of Articles 36-38 by the Constitutional Law of December 12, 1925 ; (4) The Electoral Law of September 9, 1906, containing 33 Articles, passed in the reign of Muzaffar-ud-Din ; (5) The New Electoral Law of July 1, 1909, containing a preamble, 63 Articles, and a table of the Electoral Districts and their representations—passed in the reign of Muhammad Ali. As regards the Judicial System of Persia, the following laws are important : (i) “The Principles of the Organisation of Justice” or the Law of 1912, based on Articles 71-89 of the Supplementary Constitutional Law of October 7, 1907, and (ii) the New Judicial Regulations of 1927.

Article 7 of the Supplementary Constitutional Law (henceforth to be referred to as S. C. L.) declares that the “principles of the Constitution cannot be suspended either wholly or in part”, while Article 51 of the Constitutional Law (henceforth to be referred to as C. L.) makes it obligatory to the reigning king and his successors the “maintenance of these laws and principles.” The Constitution (S. C. L. Art. 26) definitely says that “the powers of the realm are all derived from the people ; and the Fundamental Law regulates the employment of those powers.” In this respect the Persian Constitution is absolutely democratic and just the reverse of the Japanese Constitution in spirit. It definitely emphasises the importance of the separation of powers of the Legislature, the Executive and the Judiciary (Arts. 27 & 28 S. C. L.). Art. 28 says : “The three powers above mentioned shall ever remain distinct and separate from one another.”

1. *Op. cit.*, Vol. II, p. 403.

## The King

At the head of the Constitution stands the King to whom all the executive power belongs in theory. The laws and ordinances are carried out by the Ministers and State officials in the name of the King, but always "in such manner as the Law defines" (Art. 28, S. C. L.). The sovereignty is a trust confided by the people to the person of the King (Art. 35, S. C. L.). The Constitutional monarchy is vested by the people "through the intermediary of the Constituent Assembly in the person of His Majesty Reza Shah Pahlavi, and in his male heirs, generation after generation." The right to inherit the throne belongs to the eldest son of the King, whose mother is of Persian origin. If there be no male issue of the king the nomination of the Crown Prince shall take place on the proposal of the King and with the approbation of the National Assembly on condition that this prince-inheritor does not belong to the Qajar family. But if a son be born to the King in the meantime, he will, nevertheless, be the legitimate heir to the throne. In case of the decease of the sovereign, the Crown Prince is empowered to discharge all royal functions provided he has completed 20 years; otherwise, a Regent, who must not belong to the Qajar family, shall be elected by the National Assembly (Arts. 36-38, S.C.L.). No King can ascend the throne if he has not taken a prescribed oath before the National Assembly, swearing upon the Koran his determination to preserve the independence of the country, to follow the Constitution, to defend the religion and to promote the welfare of the people. The Regent is also bound to take the same oath. The person of the King is inviolable; the Ministers of State are responsible to both Chambers in all matters. The Persian King can, therefore, do no wrong. The decrees and rescripts of the King relating to State affairs will have legal force "only when they are countersigned by the responsible Minister, who is also res-



possible for the authenticity of such decree or rescript" (Art. 45). The King appoints or dismisses the Ministers, confers titles and honours, is head of the Army, Navy and Air Forces, declares war, concludes peace, makes treaties, can convoke an extraordinary session of the National Assembly and the Senate. But the expenses and disbursements of the Court are determined by law and the Royal prerogatives and powers are only those which are expressly mentioned in the S. C. Law (Arts. 46-57, S. C. L.).

### The Cabinet

Ministers of the King are appointed and dismissed by the Royal Decree of the King (Art. 45, S. C. L.). Nobody can be a Minister who is not a Musalman by religion, a Persian by birth, or a Persian subject, or who is related to the King by blood. Ministers are responsible to both Houses, both individually "for the affairs specially appertaining to their own Ministry, also collectively responsible to the two Chambers for one another's actions in affairs of a more general character" (Art. 61, S. C. L.). Art. 63 says that "the honorary title of a Minister is entirely abolished, and Art. 65 says that "The National Consultative Assembly or the Senate can call Ministers to account or bring them to trial." By Art. 67, when a Minister or the entire Cabinet is censured by a vote of no-confidence passed either by the Assembly or the Senate, the Minister or the Cabinet "shall resign his or their ministerial functions." Ministers can be prosecuted by the Assembly or the Senate for their delinquencies before the Court of Cassation, in all matters affecting the State, though the determination of such delinquencies will be regulated by a special law (Arts. 69 & 70, S. C. L.). The Ministers have the right to attend and participate in the proceedings of the Assembly (Art. 31, S. C. L.).

For looking into the affairs of the King, there is a Ministry of the Court; the Minister stands equal in rank with the

Cabinet Ministers and enjoys the same privileges, but he cannot participate in the meetings of the Council of Ministers, nor has he any responsibility before the House. In 1935, the Cabinet was composed of 8 Ministers and three Under-Secretaries (for Commerce, Agriculture and Industries), who were directly under the direction of the Prime Minister. But in November, 1938, the posts of the Under-Secretaries were abolished and now the Cabinet consists of the following twelve Ministers : Prime Minister, Ministers of the Interior, Foreign Affairs, Finance, Roads and Communications, War, Justice, Education, Posts and Telegraphs, Commerce, Industry and Mines, and the Director-General of Agriculture. The Prime Minister is chosen by the Shah, while the other Ministers are chosen by the Prime Minister. Each of these Departments is excellently organised. The Ministry of Foreign Affairs has got five sub-divisions : (i) Cabinet and Cipher division ; (ii) Personal, Inspection and Administrative Tribunal ; (iii) Passports, Nationality and Registration ; (iv) Economics ; (v) Archives, Literary and Confidential files. Besides these, there are four Political Departments as follows : First Political Department in charge of affairs relating to Turkey, Afghanistan, Iraq, Egypt and Hedaj—all Muslim States ; Second Political Department in charge of affairs relating to Soviet Russia, Poland, Baltic States and the Balkans ; Third Political Department to deal with European and Asiatic States, America and other parts of the world ; Fourth Political Department dealing with Treaties, the League of Nations and the study of International Laws. There are two other Departments attached to the Foreign Minister, viz., (1) the Department of Protocol and Ceremony, (2) and the Department of Accounts.

The Ministry of the Interior has a Tourist and Propaganda Department.<sup>1</sup>

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1. G. H. Ebtahaj : *Guide-Book to Iran* pp. 51-52, 1935.

The Ministry of Finance is now functioning very smoothly. It has become very much improved by the labours of Dr. Millspaugh—the American—who was appointed in 1921, and whose services were dispensed with in 1927 on account of a vital difference of opinion between Dr. Millspaugh and the Persian Cabinet on a question of responsibility. The Revenue of Iran has increased from 1,250,002,000 rials in 1937 to 1,528,892,000 rials in 1938, while the expenditure has also increased from 1,248,037,000 rials in 1937 to 1,527,018,000 rials in 1938, (80 rials = £1 ; 100 rials = 1 Pehlavi gold coin). The gold standard, adopted by Iran in 1930, was suspended by a law of March 31, 1932. Foreign exchange is controlled and regulated by the State ; while the foreign debt of Iran outstanding on April 8, 1938, was only £991,060.

The Ministry of Communications must be congratulated on its completion of the great Trans-Iranian Railway, which runs for 808 miles from Bandar Shah on the Caspian Sea to Bandar Shahpur on the Persian Gulf, after ten years of continuous labour and at a total cost of £28,500,000. The money was entirely raised from "internal resources, largely a monopoly tax on tea and sugar ; it was thus a symbol of Persian independence."<sup>1</sup>

The Ministry of War has brought the Army to the highest pitch of efficiency. The total peace-time strength amounts to over 40,000. Besides, Iran possesses a small fleet in the Persian Gulf and not a negligible air-force. The Majlis passed a Compulsory Military Service Law in 1927. The service begins at 21 and lasts for 2 years, but graduates of high schools and universities serve only 18 and 12 months respectively. Article 106 of S. C. L. requires the military expenditure every year to be approved by the National Assembly, while Art. 107 says that no foreign troops may be employed in the service of the State except in accordance with the

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1. *The Annual Register*, 1938, p. 281.

Law. "The military cannot be deprived of their rights, ranks or functions except in accordance with the Law.

The Ministry of Education has got a very difficult task in educating the public, in as much as Persia some decades ago was full of religious prejudices and fanaticism. The number of schools has increased from 612 in 1921 to 4939 in 1937, while the number of pupils has increased from 55,000 in 1921 to 273, 680 in 1937. The courses of study include the sciences, history, art, literature, medicine, religion and law. There are some military colleges staffed with foreign experts.

### The Legislature

At present the Persian Legislature is unicameral, but Article 43 (C. I.) definitely says that "there shall be constituted another Assembly, entitled the Senate, consisting of sixty members, the sessions of which, after its constitution, shall be complementary to the sessions of the National Consultative Assembly." We shall discuss here the constitution and powers of both these Houses as prescribed by the Constitutional Laws.

The Upper House or the Senate shall consist of 60 members 30 of whom shall be nominated by the King, 15 elected by the people of Teheran and 15 by those of the provinces. The members shall be chosen from amongst the learned, well-informed and respected persons of Persia. The regulations of the Senate must be approved by the Assembly (i.e. Lower House). So long as the Senate has not been convoked a bill shall receive the Royal Assent and become an Act on being approved by the Assembly. The two Houses have almost equal power, excepting in the money bills, which belong exclusively to the Assembly. In other bills, consent of both Houses is necessary. When the Assembly is not in session, the deliberations of the Senate are ineffective. In case of disagreement between the two Houses, the disputed proposal

shall be reconsidered by a new Assembly composed of members of the Senate and members of the Assembly elected in equal moieties by members of the two Houses. The decision of the new Assembly is only recommendatory, and in case it is not accepted, and the King supports the view of the Lower House, the latter will be effective. But if the King also does not support it, and the Senate by a majority of two-thirds wants, with the approval of the Cabinet, the dissolution of the Lower House, the latter shall be dissolved by an Imperial Command and new elections shall take place within one month in Teheran and three months in the provinces. After the arrival of all the members, the disputed proposal, if approved by the new Lower House, shall receive the Royal assent and become Law. (Arts. 43-49, C. L. and Art. 27, S. C. L.)

The Assembly—The Lower House represents the whole people of Persia. The number of deputies has been fixed at 136 by a law of October 22, 1911, but Art. 4 of C. L. says that in case of necessity the number may be raised to 200. The tenure of the House is for 2 whole years calculated from the day when all the representatives from the provinces shall have arrived in Teheran. Members must be between 30 and 70 years of age and have the right of re-election. By Art. 6, the members of Teheran are empowered to constitute a valid Assembly during the period preceding the arrival of the provincial delegates. At least two-thirds of the members of the Assembly must be present for opening debates and three-fourths when the vote is taken. A majority is obtained "only when more than half of those present in the Assembly record their votes." The Assembly shall make its own internal rules and regulations, and even determine the periods of session and recess. On the opening of the Assembly, an Address shall be presented to the King, to which a reply shall be given by His Majesty. Members must take an oath of

allegiance to the Sovereign and swear on the Koran to preserve the law of the realm and promote the welfare of Persia. The deliberations of the Assembly shall be open and public and the publications of its proceedings are absolutely free. (Arts. 1-15, C. L.). The Assembly has the right to initiate all legislations that it deems necessary and to approve or withhold all measures that are submitted before it by the Ministers. It has all power to create, modify, complete or abrogate any law, subject to the approval of the Senate and the royal assent. Over financial matters, the budget, fiscal arrangements, "the acceptance or rejection of all incidental and subordinate expenditure," etc., the Assembly has the exclusive and decisive power. Without its approval no portion of the national resources can be held or transferred (Art. 22, C. L.), no concession to any public company can be given, no State loans can be contracted (Arts. 24, 25, C. L.). As regards administrative powers the Assembly has the right to demand explanations on any matter from the responsible Minister, which should not be withheld without plausible reason, or for a long time. (Art. 42, C. L.). Treaties and covenants shall be subject to the approval of the Assembly. Should a Minister fail to give a satisfactory account of any affair, the Assembly may demand his dismissal from the Royal Presence and if his treason be established in the Court of Cassation, he shall not be employed in the service of the State (Art. 29, C. L.). The Assembly can make direct representations to the King by means of a Committee consisting of the President and six of its Members. When a Member of the Assembly proposes a measure, and at least fifteen members approve its discussion, the President of the Assembly may send the measure to one of the Committees of the House for preliminary investigation, on whose report a discussion shall take place in the Assembly and the responsible Minister must take note of it. Private individuals have the right to submit any criticisms or complaints to the Petition Department of the Archives of the

Assembly, and the Ministry or the Assembly shall take note of it, if the matter concerns them. The President of the Assembly, either personally or on the demand of ten Members of the Assembly, can hold a secret conference in which only the selected members of the House and any Minister may be present. The deliberations of such a conference will not be disclosed to the public without the consent of the Minister or the President. The Assembly has the right to reject any measure of the Ministry, but such rejection must be signified by some outward sign (Arts. 32-42, C. L.). The Members of the Assembly cannot be molested by anybody on any pretext or excuse whatsoever. Even in cases of crime or misdemeanour and the Member being arrested *flagrante delicto*, no punishment can be inflicted upon him without the cognizance of the Assembly (Art. 12, C. L.). But a person cannot at one and the same time be Member of the two Houses, and a Member ceases to be a Member when he accepts any lucrative post under the Government.

For facility of work and sound criticism of measures, the members of the Assembly elect eight Parliamentary Committees of which the Legislative, Foreign Affairs, Finance and Economics Committees are most important. All legislative projects, whether ordinary or urgent, are introduced over the signature of the Prime Minister and the Minister concerned and, after reference to the appropriate Committee for consideration and amendment, are presented to the Majlis for final discussion and sanction. Art. 101 of S. C. L. authorises the establishment of a Financial Commission whose members shall be appointed by the Assembly. The Commission is empowered to inspect and analyse accounts, to liquidate the accounts of all debtors and creditors of the Treasury, and to determine the legality of all expenditures so that "no item of expenditure fixed in the Budget exceeds the amount specified or is changed or altered and that each

item is expended in the proper manner" and to submit to the Assembly a complete statement of the accounts of the kingdom accompanied by its own observations.

### The Judiciary

Until the first decade of the 20th century, there was in Persia no division between judicial and executive functions. But as a protest against the encroachments of the Muftis on temporal affairs and also for better government of the people, the common law (*qanun-i-urf*) of Persia gradually grew up side by side with the religious law (*qanun-i-shari*). To the latter was left "public worship, the law of marriage, family and inheritance, vows, in part also pious foundations (*wakf*), all fields which in the popular mind are more or less closely connected with religion."<sup>1</sup> Commercial law, constitutional and criminal law, law relating to war and taxation, etc., came within temporal jurisdiction and were moulded in accordance with local customs, needs of the situation, equity and prescriptions. But in modern Persia positive law is very quickly superseding the religious and customary laws, the Sharia courts being virtually restricted to matrimonial cases and to the functions of the court of wards. The judges of the Sharia courts are at present nominated by the Minister of Justice and, as Sir A. T. Wilson says, "religious courts act as experts expressing views to other ordinary civil courts, on whom devolves the duty of giving judgment".<sup>2</sup>

The judicial system of Iran is based on the Law of 1912, entitled "The Principles of the Organisation of Justice", formed essentially on the French model and on the foundation of Articles 71-89 of the S. C. L. of 1907. By this law, the courts of Iran are classified into two classes—general and special, the latter dealing with special questions, commer-

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1. Joseph Schacht—*Encyclopædia of Islam*.

2. *Persia*, p. 227.



cial, military, religious, etc. The general courts of the lowest degree are the district courts presided over by Justices of the Peace and dealing with claims up to 400 tomans. The next higher courts are those of the First Instance, which are also, since 1928, presided over by a single judge ; these are established mostly in towns and have jurisdiction over several district courts. Above these stand Courts of Appeal in Teheran, Tabriz, Shiraz, Kermanshah, Ispahan, Meshed, Kerman and Ahwaz. These courts are composed of three or four judges. The highest court of Iran is the Court of Cassation (Art. 75, S.C.L.) which "shall not deal with any case of first instance, except in cases in which Ministers are concerned". A special section of the Court of Cassation hears complaints against judges. Wilson says that "the districts having courts of First Instance or Courts of Appeal have also a Parquet presided over by the Attorney-General, under whom come his assistant and investigators".<sup>1</sup> Besides these courts, there is a system of circuit courts. There is a very unhappy dualism in Persian jurisprudence, inasmuch as Arts. 2 and 71 of the S. C. Law definitely declare that "at no time must any legal enactment of the sacred Assembly be at variance with the sacred principles of Islam", and a committee of five *Ulemas* can "reject and repudiate, wholly or in part, any such proposal which is at variance with the Sacred Laws of Islam, so that it shall not obtain the title of legality." In ecclesiastical matters, the decision of the *Mujtahids* is also declared to be final. But in actuality, though with doubtful legal validity, modern Persian legislations are directly encroaching upon the domain of the *Mujtahids*. The Corpus of Persian legislation chiefly consists of the following : The Penal Code, enforced in 1925, based on the French law with Islamic limitations ; the Code of Criminal Procedure, based on the Russian Code of 1910 ; the Civil Code, containing 955 Articles, based on Islamic principles but chiefly influenced by French

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1. *Op. cit* , p. 223.

and Egyptian legislations ; the Code of Civil Procedure (1912) based on the Russian Code of 1910 ; Commercial Code, enforced in 1925, based on French principles.

Foreigners in Persia used to enjoy rights of extra-territoriality, also known as capitulations, since the treaty of Turkomanchi in 1827. But in May, 1928, these special rights came to an end, unconditionally with respect to Russia and France, but subject to the following conditions with reference to Great Britain : that foreigners in no case should be tried by Persian religious courts ; that international law should form the basis of relations of Persia with Great Britain ; that in civil or criminal cases, in which a foreigner is involved, only written evidence should be admitted ; that no foreigner may be arrested or imprisoned without a warrant except in most serious cases ; that they should be given bail and should be produced before a magistrate within 24 hours ; and that no unfair discrimination should be made against foreigners in the matter of taxation.<sup>1</sup>

The courts of Iran are supervised by the Ministry of Justice whose administrative side consists of an Inspection Department, a Translation Dept. (translating foreign codes into Persian and *vice versa*) and a Standing Commission entrusted with the responsibility for codification. The number of courts has been considerably increased and where courts of First Instance do not exist, cases up to 1,000 toman can be now taken up by the district courts. The salaries of judges have been increased and judicial impartiality and independence assured.

The Constitution, following the Fundamental Rights of the people in other States, guarantees "equality of rights before the Law" to the people of Iran. Their lives, property, homes and honour are protected from every kind of inter-

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1. Vide Sir A. T. Wilson,—*Persia*, pp. 246-51. A Note from the Persian Government to Sir R. Clive, dated May, 10, 1928.

ference (Arts. 8 & 9, S.C.L.). No one can be arrested summarily, except in cases of crime or misdemeanour, without a written authority of the President of the Tribunal of Justice. No one can be punished except in accordance with law. Freedom of residence, security of property, "acquisition and study of all sciences, arts and crafts, except in so far as is forbidden by ecclesiastical law," promotion of education at the cost of the Government, freedom of publication excepting heretical books and anti-Islamic matters, freedom of society and association (anjumans and ijtima'at), freedom of postal correspondence, and secrecy of telegraphic correspondence—are all guaranteed (Arts. 10-23, S.C.L.). Foreign subjects may become naturalized in accordance with law, while Government officials excepting the Ministers, can be proceeded against without special authorisation. In the matter of taxes no distinction shall be made amongst the individuals who compose the nation, and no money can be realised from the people except in accordance with laws duly passed by the Parliament (Arts. 24, 25, 97, 98, S.C.L.).

The rigour of the ecclesiastical law of Iran had kept the wings of individualism unduly clipped. But with Reza Shah's rise to power the sphere of individual liberty has not only widened, but has also become veritably real. In 1927 was passed the Compulsory Military Service Law which undoubtedly strengthened the nation and secured individual liberty. By a law of September, 14, 1931, the right to divorce has been permitted to women. As Filmer correctly points out, "by fixing the husband's responsibility towards his wife by providing for the custody of minor children, by establishing broader safeguards for her property rights, the law went far in affording a Moslem woman a measure of rights which for centuries had been denied her."<sup>1</sup> This law also diminished the authority of religious courts and required

1. *The Pigeant of Persia*, (1937) p. 371.

that all marriage contracts and acts of divorce be registered with a civil official. The marriage law of 1935, again, fixed the minimum legal age for women at fifteen and for men at eighteen in contravention of the Koranic prescription which had fixed them at nine and fifteen respectively. Co-education has been introduced in several schools and colleges, notably in the medical and legal institutions. On June 28, 1935, at a tea-party, the Cabinet Ministers assembled together with their wives. The wife and the daughter of the Shah come out in the public without veils, while thousands of women frequent the cinemas, restaurants, etc. In August 1935, all high-sounding titles were abolished; those were retained being "His Imperial Majesty" for the Shah; "Excellency" for high officials; "aga" or 'mister' for men and "khanom" or 'madam' for women. Religious toleration has reached such a stage in Iran that the laws of December 28, 1935, prescribing a uniform dress for all male Iranians (European coat, vest and trousers) and of 1935, repealing the Pehlavi hat by the European headgear, passed unopposed, while the Babists and the Bahaists are rapidly increasing their numbers.

Several decades ago Lord Curzon could write that "Turkistan, Afghanistan, Transcaspia, Persia,—to me, they are the pieces of a chess-board upon which is being played out a game for the dominion of the world"; and indeed, in the year 1919, that imperialist vision was almost realised. But then, old Persia re-asserted herself once again; and the genius of Reza Khan and the conjuncture of strange Anglo-Russian conflict have again brought Persia to the forefront of international politics. The Government is a peculiar national socialism, with State monopoly of imports, exports, foreign exchange and State-controlled private companies. It is also a monarchy, where the Shah is entrusted with comprehensive power, "that of an army leader, of a statesman

and of a diplomat"; where the majority of 136 deputies is made up of members of the "Targhi", a Government party; where, as Mahammed Essad Bey points out, the Assembly is "almost exclusively composed of representatives of the ruling classes and the leading families, with the broad mass of the people taking practically no active part in political life";<sup>1</sup> where provincial governors are invariably still now high army officers; and where "like Parliament the Press takes its inspiration from the Government and rarely attacks an administration on any ground, never on grounds of political affiliation."<sup>2</sup> But Iran is also a country where constitutional government originated for the first time in Asia; where democracy is not only a name but a reality; where the theory of separation of powers, individual and collective responsibility of Ministers, constitutional monarchy and the safeguarding of the fundamental rights of man—are all co-operating towards the evolution of a State that might well become the political ideal of the East.

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1. *Op. cit.*, p. 216.

2. *Political Hand-Book of the World*, 1936, p. 146.

## CHAPTER V

### AFGHANISTAN

#### Territory and Sovereignty of Afghanistan

Afghanistan,—where the earliest Vedic hymns were composed, where Zoroaster preached his religion, where Buddhism has left its imperishable marks in the great rock-cut Bodhisattvas, and where Islam has built up its impregnable citadel,—has always been the battle-field for the mastery over India, the flood-gate of all Eastern invasions, and above all, a country of eternal romance and bold adventures. It occupies the key position in the politics of Asia through its strategic importance. Bounded on the north by Russian Turkestan, where now three Soviet republics stand with alluring looks beyond the Oxus; on the west by Iran (the Fakhri line), and on the south and the east by British Baluchistan, Kashmir and the North-West Frontier Province, Afghanistan “holds the command of all the important routes and of every pass that opens into the neighbouring countries.”<sup>1</sup> The territorial boundaries of Afghanistan have always changed and shifted, and even now her eastern frontiers are not permanently settled. Throughout the latter half of the nineteenth century, the two mighty imperial Powers, Czarist Russia and Great Britain played “gigantic games of diplomatic bluff,”<sup>2</sup> with each other for extending their dominion over Afghanistan. It was in 1809 that Lord Minto, the then Governor-General of India, sent Mr. Mountstuart Elphinstone

1. Mohammed Ali—*Guide to Afghanistan* (Kabul, 1938) p. 6.

2. Prince Andre Lobanov Rostevsky—*Soviet Russia and Afghanistan* in the *Asiatic Review*, July, 1925, p-354.

as an envoy to Shuja-ul-Mulk, the ruler of Afghanistan, for the double purpose of counteracting Napoleon's influence in the Afghan court, and extending British influence as against Russia. Thirty years later, we find Lord Auckland, who was planning "the extension of British influence in Central Asia in the name of humanity as well as trade" suddenly enraged at Dost Mohammad's (the new Afghan ruler) receiving Captain Vikovitch, a Russian officer, as envoy at Kabul. On Dost's refusal to the British demand to dismiss the Russian envoy, British forces invaded Afghanistan, and set up in April 1839 "a puppet Amir who was kept on his throne by British bayonets".<sup>1</sup> The Afghan people rose in revolt, murdered Sir William Macnaghten, the British envoy. Dost Mohammad returned and proclaimed himself Amir, In June 1855, the British concluded a treaty with Dost, by which they promised to help him against Persian attacks on the west, and to contribute a sum of one lakh of rupees per annum towards the maintenance of a regular Afghan army provided "the British officers were received in Afghanistan to help in the expenditure".<sup>2</sup> Sher Ali, who succeeded Dost, after a typical war of succession, fierce and fratricidal, inclined to the Russian Government, and this resulted in the second Anglo-Afghan War. Sher Ali defeated, fled the country, "writing to the British as he fled that he was on his way to St. Petersburg to report their action to the nations of Europe".<sup>3</sup> His eldest son, Yakub Khan, by the Treaty of Gandmark, ceded to the British the Kuram valley, Pishin and Sibi and the control of the Khyber and Michni Passes and of the tribes in the neighbourhood. By the terms of the Treaty, there was to be a British Resident at Kabul; Afghanistan was not to have direct dealings with other States; in foreign affairs she was to be subordinate to British influence. The

1. Iqbal Ali Shah—*The Tragedy of Amanullah*, 1933, p. 27.

2. Sir George Macmunn—*Afghanistan*, 1929, p. 161.

3. *Op. cit.*, p. 175.

British Government promised to pay an annual subsidy to the Amir. Afghanistan thus became a vassal State of Great Britain. But the Afghan people again revolted and murdered the British envoy at Kabul, Sir Louis Cavagnari. Yakub Khan abdicated, and Abdur Rahaman, defeating the other rivals to the throne, became the new Amir. In July 1810, the Government of India, through its Political Agent, Sir Lepel Griffin, sent a letter to Abdur Rahaman, which being very important from the point of view of Afghan sovereignty and frontiers, I reproduce here at length: "The British Government has no desire to interfere in the internal government of the territories in possession of Your Highness, and has no wish that an English Resident should be stationed anywhere within those territories. For the convenience of ordinary friendly intercourse, such as is maintained between two adjoining States, it may be advisable that a Mahomedan Agent of the British Government should reside, by agreement, at Kabul. The Viceroy and Governor-General in Council authorises me to declare to you that since the British Government admits no right of interference by foreign powers within Afghanistan, and since Persia has pledged to abstain from all interference with the affairs of Afghanistan, it is plain that Your Highness *can have no political relations with any foreign power except with British Government.*"<sup>1</sup>

In 1883 Lord Ripon agreed to offer the Amir 12 lakhs of rupees as an annual subsidy "to be devoted to the payment of your troops and to other measures for the defence of your *North-West* frontier."<sup>2</sup> On July 22, 1889, the final protocol signed at St. Petersburg by Colonel Sir West Ridgeway (Great Britain) and M. Zinovieff (Russia) settled the Russo-Afghan frontier in the north-west. Panjdeh was annexed to the Russian empire. On October 2, 1893, the British Mission

1. Stephen Wheeler—*The Amir Abdur Rahaman* (1895), pp. 87-88.

2. *Op. cit.*, p. 125.



under Sir Mortimer Durand reached Kabul and finished their work by November 15. The Amir promised to "abstain from interference in Chitral, Bajaur, Swat and the Afridi country ; and he consented to the demarcation of a boundary line which would separate his dominion from other parts which the Indian Government desired to keep under control, namely, Kurram valley, Waziriland, the Gomul and the district of Zhob."<sup>1</sup> On March 11, 1895, by an equally important agreement between Great Britain and Russia, represented by Lord Kimberly and M. de Staal respectively, the cis-Oxus portions of Darwiz were ceded to Afghanistan by the Amir of Bokhara (under Russian control) on condition that the Afghans evacuated those portions of Shignan and Roshan which lay on the right bank of the Panja branch of the Oxus. The two rivers, Wood's Oxus and Panja, were, therefore, taken as the north and north-eastern boundary lines of Afghanistan. The British and the Russian Governments "engaged to abstain from exercising any political influence or control, the former to the north, the latter to the south, of the above line of demarcation."<sup>2</sup> Amir Abdur Rahaman's son and successor, Amir Habibullah faithfully followed the Anglo-Afghan treaty obligations. In his reign the famous Anglo-Russian Convention of 1907 was signed. Both England and Russia solemnly promised to respect the territorial integrity of Afghanistan. England gave an undertaking not to alter the political status of Afghanistan while Russia declared that she had no desire to extend her sphere of influence over her. Habibullah maintained Afghan neutrality throughout the war of 1914-18, but his son and successor Amanullah, as M. Maurice Pernot points out "proclame devant son peuple et notifie *par lettre* au vice-roi de Indes l'indépendance de l'Afghanistan. L'Angleterre proteste."<sup>3</sup> The result was,

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1. *Op. cit.*, pp. 207-208.

2. *Op. cit.*, pp. 187-189, paragraph 4 of the Agreement.

3. *Revue des deux Mondes*, January, 1927. p. 325.

the Amir ordered his army to swoop down upon British India in May 1919, in response to "the popular demand for war with Great Britain regarded as Turkey's chief enemy"<sup>1</sup> as well as to free Afghanistan from British bondage imposed by the treaty of Gandmak. The British Intelligence Service intercepted on May 19, 1919, two letters, one written by Amanullah, the other by his Foreign Minister, Mahmud, to Lenin and the Foreign Minister at Moscow, respectively. Amanullah's letter announced to the "Republic of Russia that he (the Amir) strongly adheres to the principle of equality among all men and peaceful union of all peoples." Mahmud's letter expressed "the hope that friendly relations with Bolshevism will be established on a permanent basis." Both these telegrams hailed the Russian revolution as a great liberating force.<sup>2</sup> In India the Afghan army was driven back by the British forces, but the Treaty of Peace signed at Rawalpindi on August 8, 1919, released Afghanistan from British control over her foreign affairs. It also stopped the British subsidy to the Amir. On February 18, 1921, the Soviet Government concluded a treaty with Afghanistan. It was ratified by the Afghan Madjliss in August. By this treaty the parties agreed to establish diplomatic and consular representatives in both countries. The Afghan Government recognised the independence of Khiva and Bokhara, whatever form of government might be prevalent there. This tantamounted to supporting the Bolsheviks as against the Basmajis.<sup>3</sup> The Soviet Government granted free transit to Afghan exports and promised technical and material help. The British Government now became anxious to improve their relations with Afghanistan. They concluded a final treaty with Afghanistan, signed at Kabul on November 22, 1921, and ratified on February 6, 1922.

1. *Encyclopædia Britannica*—Vol. I., p. 291.

2. Quoted by Iqbal Ali Shah in *Modern Afghanistan* (1938) pp. 127-128.

3. For the Basmaji Movement, see Mustafa Chokaiev's article in the *Asiatic Review*, April, 1928.

Art. 1 of this treaty declares : "The British Government and the Government of Afghanistan mutually certify and respect each with regard to the other *all rights of internal and external independence.*" Art. 2 settled the frontiers between India and Afghanistan. Art. 3 provided for full diplomatic representations in each other's courts. Art. 6 provided that Afghanistan can import, without let or hindrance, from ports of Great Britain and British India, all materials and instruments, including arms and munitions, which would make her strong and prosperous, but only so long "as it is assured that the intentions of the Government of Afghanistan are friendly and that there is no immediate danger to India from such importation."<sup>1</sup> But Afghanistan could not allow the treaty to cool down its relation with the Soviet. On August 31, 1926, she concluded another treaty with the Soviet. Art. I of this treaty declares: "In the event of war or hostile action between one of the contracting parties and a third power or powers, the other contracting party will observe neutrality in respect of the first contracting party." The second Article emphasises mutual non-aggression. The parties agree not to do anything in their countries which may cause political or military harm to either. By Art. 3 they agree "to abstain from all sorts of armed or unarmed interference in one another's internal affairs."<sup>2</sup> After the abdication of King Amanullah in 1926, and the usurpation of the Afghan throne by the rebel leader Baccha-i-Saquo, who remained king for nine months, foreign relations of the country continued as before. When Sirdar Nadir Shah after driving out Habibullah (Baccha-i-Saquo's royal name) in October, 1929, got himself elected and proclaimed as King, he issued a Royal Charter, Art. 4

1. *Treaty Series*, No. 19, *Cmd.* 1786 of 1922 ; see also Toynbee—*Survey of International Affairs* 1920-23, p. 383.

2. For the text of the Treaty, see Iqbal Ali Shah—*Tragedy of Amanullah* (1933), pp. 272-74.

of which declared the following : "Afghanistan shall maintain its relations with foreign countries as they were in the reign of H. M. King Amanullah Khan. The present Government wishes to establish relations of goodwill with adjacent countries."<sup>1</sup> While opening the first Afghan Parliament on July 6, 1931, King Nadir Khan reiterated his foreign policy in these words : "In accordance with the principles of international laws, I recognized all the treaties which the preceding Government had entered into with the friendly States. I have made no other treaty, secret or open, at all."<sup>2</sup> King Zahir Shah, who ascended the throne on the death of his father, Nadir Shah, at the hand of an assassin in 1933, re-affirmed the policy of the late King. On September 26, 1934, Afghanistan became a member of the League of Nations. Her candidature was encouraged by Turkey and supported by Russia.<sup>3</sup> In February 1936, the Afghan Government declared its policy henceforth to educate its students in commerce, mining and military affairs, not in England, France, or Germany but in Japan—a wonderful proof of the awakening of the East. On July 9, 1937, Afghanistan acceded to the great Saadabad Pact,—the defensive treaty among the Moslem States of the Middle East, against any European or Asiatic aggressor. On August 17, 1940, while opening the Afghan Parliament, King Zahir Shah reiterated a strict policy of Afghan neutrality in the European war.

### The Afghan People

Afghanistan has a population of 12 millions, but the country does not possess ethnic homogeneity. The Afghans proper are Durranis who claim their descent from the Palestinian captives of Nebuchadnezzar and call themselves

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1. For the text of the Royal Charter, see Iqbal Ali Shah—*Modern Afghanistan* (1938), pp. 219-21.

2. *Op. cit.*, pp. 229-239.

3. Keesing's *Archives*, 1934-37. p. 1379, A. G.

Ben-i-Israel. The Uzbeks, the Tajiks and the Turcomens of the north speak a Turki tongue. There is a fair admixture of Semitic blood, but Mohammed Ali says that the Afghans belong "to the original Indo-European stock".<sup>1</sup> Sir George McMunn seems also to be of the opinion that the Ghilzis of the north are not Turkish but either Aryans or Jats.<sup>2</sup> The Hazara Mongols in the central regions, the Nars in the eastern districts adjoining Chitral, the Kafirs in the north-east, the Baluchis in the south—speak various local dialects and differ from one another in physical type as well as in customs and traditions.<sup>3</sup> But Pashtu is spoken by 60 % of the people, and has been made the national language, though a few years ago Persian was the official tongue. Another element of common nationality is religious unity. The majority of the people belong to the Sunni sect of Islam. The Hazaras are Shias, the Kafirs are unbelievers. There is also a fair number of Hindus, Buddhists and Jews. The Afghans as a whole are very brave and hardy. They love independence more than their lives. In spite of their racial differences, they constitute a very powerful nation and are united to live and die in defence of their fatherland. "Love of country and love of freedom form the bond of union among the peoples".<sup>4</sup> But while Islam has united the country and has enabled the Afghans to "understand and appreciate the underlying force of *communism* which would make all men equal", it has also strengthened "that conservative trait in them which venerates tradition".<sup>5</sup> This explains why King Amanullah was overthrown when he tried to Europeanise

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1. Mohammed Ali—*Guide to Afghanistan*, p. 50.

2. Asiatic Review—"Afghanistan and India." April, 1928, p. 254.

3. A. E. Hudson and E. Bacon—*Inside Afghanistan in Asia*, March, 1940, p. 120.

4. Mohammed Ali—*Op. cit.*, p. 50.

5. Iqbal Ali Shah—*Nadir Shah and After* in the *Contemporary Review*, March 1934, p. 337.

the Afghans overnight. From the ethnic and linguistic points of view, Afghanistan does not seem to have attained her territorial unity or integrity. There are still two very difficult problems to be solved. First, the unsettled tribes between British India and the Afghan border, though under British influence since the Durand Mission, belong really to Afghanistan who still aspire after their inclusion into the mother country. This idea is subtly expressed by Prof. Muhammed Ali in these words: "The Amir (Abdur Rahaman) was made to agree that Chitral, Bajawar, Swat and Tirah be included within the British sphere of influence. Later on, he was also asked to withdraw his claims over Waziristan and the district of Zhob. Thus, the whole of the frontier, from the Black Mountains to the Zhob valley, *which from geographical and ethnical points of view, forms the integral part of the country, was lost to Afghanistan*".<sup>1</sup> Secondly, the problems of the northern frontiers are not less difficult or exacting. The creation of the three republics, Tajikistan, Uzbekistan and the Turcomen Republic, on the northern borders of Afghanistan, under Soviet inspiration and with the closest political and economic relations with the Red Republic, has produced considerable stir among those sections of the Tajiks, Uzbeks, Turcomen and Khirgiz peoples who live within Afghanistan. As a writer in the *Asiatic Review* pointed out, "The Oxus, though the political boundary, is not an ethnological one. People of these four tribes and races live in considerable numbers on the Afghan side of the river. The Soviet regime in these republics is carrying out some remarkable activities".<sup>2</sup> The Soviet Government, again, has followed a strict ethnographical line in the delimitation of these republics. Lobanov-Rostovsky opines that the entire development "is conspicuously directed against

1. *Op. cit.*, p. 13,

2. *Asiatic Review*, January, 1928, p. 21.

Afghanistan".<sup>1</sup> It is expected by the Soviet that this national autonomy and decentralisation on strictly ethnological grounds will induce the Tajiks, Uzbeks etc. of Afghanistan to demand administrative separation and to unite with their brethren beyond the Oxus.

### The Government of Afghanistan up to 1929

Though Afghan kingship began with Ahmad Shah Abdali as an elective monarchy, yet very soon it transformed itself into an absolute one. The King became the fountain of all power, and the Ministers so many lieutenants of the King, carrying out his will and command. Afghan monarchy, before the reign of King Zahir Shah (1933), was marked by certain peculiar characteristics. The rule of succession was generally determined by the law of natural selection. The eldest son of a reigning King had no assured claim to the throne. The actual successor had always been he who had the active support of the army, and of the tribal chiefs; who could carry out a successful military *coup d'état*, and thus get rid of other claimants to the throne by violence, treachery or cunning. The eldest male member in the ruling family and not the eldest son of the ruling monarch had a greater chance of success. But if the eldest son was nominated by the King, and had the support of the people, as in the case of Amir Habibullah, son of Amir Abdur Rahaman, then generally he ascended the throne without any challenge. Excepting two cases, one of Amir Habibullah and the other of King Zahir Shah, almost all Afghan rulers ascended the throne after a civil war. Thus Sher Ali, who succeeded Dost Mohammad, was not his eldest son. Yakub Khan, who succeeded Sher Ali, was not his son. Amir Abdur Rahaman, who succeeded Yakub, was not a son of Sher Ali, but of his elder brother, Afzul. King Amanullah also had ascended the throne by ousting the

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1. *Ibid*, July, 1926, p. 363.

claim of his elder brother, Inayatullah. Two fundamental reasons can be put forward explaining why every case of Afghan succession to the throne had been marked by civil war. First, there was no statutory rule of succession. The tradition of the country tolerated such fratricidal wars. Secondly, as Elphinstone pointed out, "The practice of conferring the different great governments on the King's sons generally leads to a contest, which is decided by the wealth, abilities and popularity of the rivals."<sup>1</sup> The Afghan Kings used to divide their kingdoms into several parts, appoint their sons as heads of these divisions and give each of them separate armies and separate revenues to maintain themselves. Naturally, when the King died, the sons used to draw out their swords to try their luck. The one who had the control of the royal treasury and magazine, and had the greatest influence over the tribal chiefs, naturally used to get the better of others.

### Prerogatives of the Amir

Afghan Amirs, in strict accordance with the Holy Law, are mere servants of God, and His Prophet. Wheeler says that "the Amir Abdur Rahaman has always held somewhat inflated notions as to the divine right of kings."<sup>2</sup> It is true that the Amirs have always tried to be absolutely supreme throughout the territory; that they have poisoned, beheaded and strangled their rivals and recalcitrant subjects. But this cannot mean that they claimed divine right like King James or Louis XIV. At the time of Dastarbandi i.e. coronation, the Amirs receive the Baiat, i. e. the hand of allegiance from the people. Amir Abdur Rahaman introduced the practice of swearing allegiance on the Koran in 1891, when he intended to leave Afghanistan for England. The Afghan Amir enjoyed a large number of prerogatives: privilege of coining, the

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1. M. Elphinstone—*Kingdom of Kabul*, 1839. Vol. 11. p. 243.

2. Stephen Wheeler—*The Amir Abdur Rahaman*, (1895), p. 138.



right of being prayed for in the Khutba ; the right to make war, peace, treaties, etc., the right to make appointments, to authorise the collection and expenditure of revenues etc. He was and still is the head of the executive, the judiciary and the church. But there were certain peculiar restraints on the Afghan Amir. He could not cede, before the time of Abdur Rahaman, any part of the territory, or change the customary land revenue, or resume the grants of his predecessors, or curtail the rights of the tribal chiefs to administer justice in their tribes. For important changes in home or foreign policy, the Amir generally held a Darbar where Proclamations were made. All important State documents, treaties, agreements etc. must bear both the Great Seal and the signature of the Amir.

### The Cabinet

The Afghan Cabinet was called the Darbar-i-Khas or Khilwat. There was also a Privy Council. The Cabinet Ministers were Privy Councillors, and were thus entitled to attend the General Darbar (Darbar-i-Am). Before Amir Abdur Rahaman the departments were not systematically organised. The Amir writes in his autobiography: 'Before my accession to the throne, the various departments of the Government were so mixed up with each other, that one could hardly say whether there were any departments. For instance, there was one man, named Mustauf (he may be called Prime Minister, Paymaster-General, Accountant-General or anything else). This man had a small staff of ten clerks or thereabouts, and he carried on the administration of the whole kingdom in his bed-room: there were no public offices at all.'<sup>1</sup> The Amir divided the departments into two classes—(1) Military or Nizami and (2) Civil or Mulki. The Military Department controlled all the war.

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1. *Life of Abdur Rahaman*, edited by Mir Munshi Sultan Muhammad Khan (1900), Vol. II., p. 50.

industries (arms and ammunitions). The army was divided into (1) artillery, (2) cavalry, (3) infantry, police, militia (Khassadars), militia cavalry (Khwanin Sowars), and volunteers. The Civil Department consisted of the Treasury (Khazanas) in which all revenues were paid. It was divided into Public Treasury (Khazana-i-Amirah) and Private Treasury (Khazana-i-Khas). Each of the last two was again divided into Cash Treasury (Khazana-i-Nakdi) and Non-cash Treasury (Jinsi). The Treasury Department had at its head the Khazanadar assisted by Controllers of the Exchequer. The sources of the revenue were: taxes on land and fruit trees, duties on export and import, sales of stamps for promissory notes, forms of contracts, bills of exchange, etc.; Government trade and commerce; revenue from Government land, minerals and public houses; fines for various crimes; confiscated property; subsidy from the India Government (18 lakhs of rupees). For the final settlement of accounts, there was the Hisab Giri (the Accountant-General's office).<sup>1</sup> There was also a Public Works Department under the Mir Imrad; a Medical Department, introducing European medicines, under an English woman, Miss Lillias Hamilton, the Amir's Court doctor; an Agricultural Department introducing the cultivation of sugarcane in the provinces of Kandahar and Laghman, and acclimatizing orange trees, bananas etc., imported from India; and a Postal Department, establishing communications with the neighbouring countries and opening offices in every town of Afghanistan.

The Afghan Cabinet was generally composed of the following officials: Ishik Agasi (the Gentleman Usher), Lord of the Seal, Chief Secretary (Munshi Bashi) and several other Secretaries including the Chancellor of the Exchequer; military officials of the body-guard; Lord Treasurer of the private treasury of the sovereign; Secretary of State for war

1. *Op. cit.*—Vol. II., p. 61.

(Amin-i-Nizam); Secretaries of State for the North, South, East and West Afghanistan, who were in charge of the revenues of these divisions; Postmaster-General, Commander-in-Chief or his deputy; Quartermaster-General; Accountant-General; Head of the personal attendants of the sovereign; Superintendent of the Magazines; Heads of the Board of Trade and of the Board of Education.<sup>1</sup> There was no Prime Minister, as the King himself presided over the meetings of the Cabinet. The Ministers were responsible to and dependent upon the pleasure of the Amir. They had no collective responsibility but were severally appointed and severally dismissed by the Amir.

### The Legislature

The supreme legislative power resided in the Amir, but he was generally assisted by an advisory council called the Darbar-i-Am composed of three classes of representatives, viz., (1) the Sirdars, i.e. heads of the royal Durrani clan (and not any other clan), (2) Khans, i.e. clan of Uloo chiefs, elected by the people, with the approval of the Amir; and (3) the Khan Noom, the Kazis the Muftis and the Mullahs, i.e. representatives of Muhammadan religion. The Amir had the power to create Sirdars (like Peers). By a law of Amir Abdur Rahaman, the title Sirdar was restricted to those heads of the Durrani clan who were descendants of the Amir Dost Muhammad Khan and his brothers. How the Khans were elected has been described by Amir Abdur Rahaman in these words: "In every village or town there is one man elected by the burgesses of that town who must have certain qualifications.... He is elected by the inhabitants of that village or town and is called Malik or Arbab. These Maliks or Arbabs elect another man who is one of them, but a man of greater influence and greater importance in the province or

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1, Mir Munshi Sultan Mohammad Khan—*The Constitution and Laws of Afghanistan*, (London, 1900), p. 70.

constituency, whom they call the Khan or chief. Our House of Commons is composed of these Khans. But in the matter of electing these Khans, the final authority rests with the sovereign".<sup>1</sup> But as this Afghan Parliament was not a very experienced or educated body, the Amir retained in himself the sovereign authority in legislation, the full control over the army and also the power of vetoing any reforms or schemes proposed or approved by this Durbar. In times of urgency or war, the Amir used to summon a bigger assembly consisting of the principal bondholders of the country, subordinate Mullahs, chiefs of the royal clan and other notables. The present Loe Jirga is the prototype of this bigger Assembly.

#### Local Government and Justice

The country was divided into several provinces. In each province and important town, there was a governor whose main duty was "to collect the revenues from the land-owners etc., to settle disputes of landowners, to keep peace in the provinces, and to forward the King's proclamations and commands from time to time to other officials of the town and to the King's subjects in his territory".<sup>2</sup> Several small governors were under a head Governor (Hakim) and over the head Governors were the two Viceroys (Naib-ul-Hukuma) of Herat and Turkestan. Over the latter stood the Amir's eldest son, Prince Habibullah Khan, constituting the supreme court of appeal.

The Afghan King was the head of the Islamic church and also head of the judiciary, hearing appeals, whether civil or criminal or ecclesiastical, and also important cases in the first instance. The latter class of cases were generally those of high treason, and important revenue and administrative cases.

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1. Quoted by Mir Munshi—*Op. cit.*, p. 57.

2. Life of Abdur Rahaman—*Op. cit.*, Vol. I. pp. 208-209.

No death sentence could be carried out unless confirmed by the Amir ; who could transfer any case from any court to himself for trial. People were allowed the customary right to petition the Amir when he sat in the Durbar. King's courts were established in every important town and provincial headquarters under the presidency of the chief administrative officers, governors and governors-general of the region. Side by side with these were the more numerous Kazi's courts in every town, having jurisdiction over all matters of religion, business, marriage, divorce, inheritance, etc. In doubtful cases the Muftis determined the law. Cases were often decided by a majority when there were differences of opinion among the judges. The Kotwals tried all criminal cases in the first instance, and also managed the local police and the jails. Besides these courts, there were the Panchayats composed of a number of merchants, for the determination of commercial cases. There were also some revenue courts. As the people were unruly, the Government was uncommonly stern. Murder, treason, adultery and apostasy were punished with death. Tortures, so long used in criminal trials for extorting confession, were abolished by Abdur Rahaman. Systematic codes for regulating trial and extent of punishment were introduced by the same Amir, who also had abolished slavery. The tribal chiefs, however, retained their customary rights to try the members of their tribes in certain cases. The State allowed the injured party to settle all cases excepting theft and murder by taking money from the offender. But the Kabul police code was curiously elaborate. It forbade evil speaking in the streets.<sup>1</sup> Religious toleration was not, however, of a very high order.<sup>2</sup> The system of government established by Amir Abdur Rahaman was faithfully followed by his son and successor Amir Habibullah (1901-1919). He

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1. Wheeler—*Op. cit.*, p. 214,

2. *Op. cit.*, p. 226.

established a Council of State for the settlement of tribal affairs, and made provision for the collaboration of tribal chiefs with provincial governors for the adjudication of tribal cases. After the conclusion of the Anglo-Russian Convention on August 13, 1907, which gave an international guarantee to the inviolability of the frontiers of Afghanistan, the Amir began to introduce a series of reforms in the country. The motorcars, the telephone, the newspapers, hydro-electric schemes etc. began to appear one after another. The Habibia College became a centre of modern education. After the outbreak of the World War, the Amir had in spite of his neutrality received a German mission which, however, left the country without being able to do anything. On February 20, 1919, the Amir was assassinated in his old age. The army "was highly incensed at the murder of its Amir, and arrested the Commander-in-Chief Nadir Khan."<sup>1</sup> For six days Nasarullah Khan occupied the throne; but he was removed by Habibullah's second son Amanullah, who ascended the throne on February 28, 1919, and sent Nadir Khan off to govern the stormy southern province of Khost. Amanullah's first achievement was the declaration of war against the Government of India. The end of this war and the nature of the Anglo-Afghan treaties of 1919 and 1921 we have noted. The country became completely independent both internally and externally. From the very day of his accession to the throne, the new Amir began to introduce a series of radical reforms, political, social and economic. He "built a palace, and erected a pillar and distributed medals to his defeated troops to commemorate his 'victory over the greatest empire in the world',<sup>2</sup> and assumed the title of King in place of Amir. Colleges imparting Western education, introduction of European dress, construction of a powerful wireless station

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1. Sir George Macmunn—*The Tragedy of the Afghan Throne in the Nineteenth Century and After*, December, 1933, p. 675.

2. George B. Scott—*Afghan and Pathan*, (1929), p. 176.

at Kabul ; building of big roads, electric stations ; complete reorganisation of the army on modern lines, employment of Europeans in the public services, education and technical works, reception of foreign Legations at Kabul, etc., were some of his radical reforms.

Towards the end of 1923, the King gave the Afghans a Constitution of 73 Articles. The Government was declared an absolute monarchy (Art. 1), the Crown passing hereditarily to the direct male descendants of the reigning King (Art. 4). Islam was declared the official religion, but toleration was extended to the Parsee and Jewish communities (Art. 2). The King was declared to be the Defender of the Faith (Art. 5), and his name was to be mentioned in the Khutbah ( Art. 7). There was to be a Council of State and a number of Consultative Councils which were to be partly elective (Arts. 39-49). The Ministers of State were to render accounts of their work once a year to an Assembly of Notables (Art. 27). Slavery was prohibited. The Afghans were allowed to pursue journalism and teaching ; but foreigners were not given these rights (Arts. 11 and 14). Primary education was to be compulsory and universal (Art. 68).<sup>1</sup> The Loe Jirga approved of this Constitution. Immediately a Legislative and a State Assembly were constituted, with a Cabinet under the presidency of the King himself. The following departments each under a Minister were set up : Foreign Affairs, Interior, Education, Commerce, Justice, Revenue and War. In 1927, the King set out for a European tour. While at Port Said he proposed in his interview to the Editor of the Egyptian paper "Alahram" to give the Afghans another constitution on his return from the tour, in which there was to be a Parliament of which "every

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1. A. J. Toynbee—*Survey of International Affairs*, 1925, Vol. I, p. 566 (f. n.) ; also Sambasiva Rao—*King Amanullah*, (1929), Part II, p, 39,

member was to be elected and Mullaism was not to be an essential qualification".<sup>1</sup>

In the absence of the King, the situation in Afghanistan was rapidly deteriorating. Indeed, the reforms, from their very inception, had created a violent opposition in the country. In 1924 there was a revolt in Khost which was suppressed with difficulty. Yet after his return from the tour, the King continued to issue radical "edict after edict in the face of the clearly expressed opposition of the Loe Jirga." The pay of the army was in arrears ; the administration was captured by the King's favourites. There was corruption and nepotism everywhere, while the discontent of the clergy was slowly smouldering. The conflagration broke out in the autumn of 1928. Two official documents, (i) the proclamation of the clergy of the Northern Provinces, containing 21 Articles, and (ii) the appeal of the clergy of Kandahar, point out the following as the causes of revolt : "The sending of Afghan girls abroad for higher education ; the opening of the girls' schools which daughters could attend without the formal permission of their fathers or their husbands ; the order to wear European dress and headgear ; the change of the day of rest from Friday to Thursday ; the abolition of the veil" ; Amanullah's negligence in "observing the prayer ritual constituting one of the pillars of the Mussalman religion" ; "stopping of allowances from the State treasury to the Mullahs and Muezzins and other servants of the Mosque" ; the refusal of the King to include "in the National Council and on the Executive Commissions of the Ullemas to the half or in any case not less than one-third of the whole composition, to see that legislation conforms with the dogmas of the Shariat" ; and lastly, the substitution of a national system in military recruitment based on an elaborate census,

1. S. Rao—*Op. cit.*, pp. 65—66.



in place of the old system of recruitment on a tribal basis.<sup>1</sup>

The King tried to placate the people by withdrawing some of his reforms, but this rather weakened his position in the eyes of the people, and proved his guilt. The revolt spread all over the country. The King refused to shed blood, and abdicated in favour of his elder brother Inayatullah. But the latter failed to stem the tide of the rebellion, and himself was swept away. Then Amanullah made some ineffective attempts to regain the control over the country ; but he failed and left Afghanistan on May 15, 1929.

Baccha-i-Saqao, a Tadjik, whom Nadir Khan dubbed as "the thief of Kuhimadan", marched against Amanullah with his "seally wag followers", captured power and proclaimed himself as Amir Habibullah. Curiously enough, the Bolsheviks, beyond the Oxus, hailed Baccha as the liberator of the Afghans and described the reactionary rebellion as a great peasant movement. The clergy of the Northern Provinces issued a Proclamation in which they condemned Amanullah and accepted Baccha as their Amir in these words : "We all the Muslims and particularly the population of the Northern Province, depose King Amanullah...from the present moment. Therefore, we recognise ourselves in accordance with God's will and the directions of the Great Prophet and his fellow companions, as sincere subjects of the Emir Habibullah, who is a man of honour, the servant of the people, the defender of the pure faith of the Prophet, a man of crystal morality, brave and manly, who loves his subjects. We recognise him as a Ruler of Kabul on the condition that he conducts the affairs of State in accordance with the Divine Will and the Laws of the Shariat."<sup>2</sup> Emir Habibullah reigned for nine

1. Mustafa Chokainev—*The Situation in Afghanistan* in the *Asiatic Review*, April 1930, pp. 324-325.

2. *Asiatic Review*—*Ibid*, p. 328.

months, and broke down all traces of modern civilisation. Sirdar Nadir Shah, a cousin of Amanullah, and formerly his Commander-in-Chief, reached Afghanistan on March 9, 1929, from France where he was convalescing. The better section of the people at once joined him, and after various ups and downs his levies defeated the forces of Habibullah. Sirdar Nadir Shah captured Kabul on the 9th. October, 1929, and on October 16, was elected and proclaimed King of Afghanistan. Soon after his election to the throne, the King announced his policy in a Royal Charter which forms the basis of Afghan political life to-day. The first Article says: "The Government shall carry on the administration of the country in conformity with the dictates of Islam, according to the school of Imam Abu Hanifa. Subject to the dictates of religion, all the nationals of Afghanistan shall be considered brethren without regard to race or *tribe*, and shall be equal in the sight of law. Hijab will be established in Afghanistan in accordance with the Shariah."<sup>1</sup> It is thus clear, that instead of a radical policy, King Nadir Shah followed a policy of caution and slow progress, in conformity with the religion and tradition of Islam. Article 2 of this Charter condemned bribery and prohibited the use of intoxicating liquors. Art. 3 emphasised the need of an organised Army and the setting up of a Military Academy. Recruitment was to be on a tribal and voluntary basis. The fourth Article says: "Afghanistan shall maintain its relations with foreign countries as they were in the reign of H. M. King Amanullah Khan. The present Government wishes to establish relations of goodwill with adjacent countries." Art. 5 proposed the setting up of a Selection Board for the impartial and careful selection of governors, provincial officials, heads of prefectures

1. For the text of this Royal Charter, see J. D. Ahmad and M.A. Azid—*Afghanistan—A Brief Survey* (1936). Sirdar Iqbal Ali Shah unwarrantedly uses the word 'creed' for the word 'tribe'—see his '*Modern Afghanistan*', p. 219.

and other civil officers from a list of names submitted to the Board by the Government. Articles 6—8 proposed various measures for the improvement of finance, commerce, agriculture, education and modernisation of the country. Art. 8 says: "*Knowledge and science* are most important for the material and moral development of Afghanistan; hence the present Government attaches extreme importance to this matter"—a clear indication that Afghanistan will not live the mediæval life any longer. The last two Articles determine the form of government. Art. 9 says: "Representatives of the nation shall meet at the capital. The method of election shall be as heretofore. The people shall elect such wise men, scholars and notables, in whom they have the fullest confidence, as their representatives. Ministers of Government and Governors shall be responsible to the National Assembly. It shall elect its own President, who shall have the right to institute inquiries." Art. 10 declared that "the Prime Minister shall be appointed by the King and he shall select other members of his Cabinet and submit their names to His Majesty for royal approval."

Faithful to the Royal Charter, the King granted the people a democratic constitution on October 31, 1931. By this Constitution he renounced for ever all the powers of an absolute monarch, for himself and his successors. We shall deal with this great Constitution afterwards. For the present we shall see the march of events till the accession of his son and successor, King Zahir Shah, to the throne of Afghanistan. While opening the First Parliament under the new Constitution, the King Nadir Shah made a memorable speech in which he spoke in the highest terms of the virtues of democratic government through a National Assembly. The King said: "Conferences are the foundation of all our actions. By the injunctions of the Holy Koran we were and are bound to hold consultations and in future too, it shall be incumbent on us to

act accordingly. Prophet Muhammad (may prayers and peace be on him) used to hold consultations for the solutions of problems. The rightly-guided Khalifas (may God be pleased with them) used to carry on their affairs by consultation. ....In Afghanistan conferences were held from remote antiquity, since we can consider the Afghan *Jirga* as the just ruler of the Afghans.....I hold a National Assembly to be the foundation of prosperity and a "special instrument for the reforms of the country."<sup>1</sup> King Nadir Shah, therefore, set up a truly constitutional government for the first time in the history of Afghanistan. Then he quickly stabilized the budget and began to organise the country. He started building big roads, and completed the one between Kabul and Mazar-i-Sharif, near the Russian frontier, in three years. He opened several agricultural, animal husbandry and dairy farming institutes out of his privy purse. He reorganised the army and laid the foundations of the Military Academy in the Bala Hissar Fort. Medical schools were started at Kabul in 1931. Provincial administrations were supplied with funds for the promotion of nation-building activities. But unfortunately the life of the King was cut short by an assassin on November 8, 1933. An emergency meeting of the State Council was immediately held and "local members of the Parliament were summoned, under Article 5 of the Fundamental Law of 1931, to elect the new King."<sup>2</sup> Sirdar Mahmud Khan, the senior Minister, proposed the name of Prince Mahmud Zahir Khan, the only son of the late King Nadir Shah, as his successor. This was unanimously accepted and the news were broadcast.

On November 18, 1933 the Loe Jirga (Grand National Assembly) met in the Parliament Hall in Kabul, under the presidency of His Excellency Abdul Ahad Khan, President

1. For the text of this speech, see Iqbal Ali Shah—*Modern Afghanistan* (1938), pp. 226-239.

2. Ahmad and Aziz—*Op. cit.*, p. 79.

of the National Assembly. The Prime Minister, the President of the Senate, and all the dignitaries of the State met on this solemn occasion. The Premier read the speech on behalf of the King. The Loe Jirga then passed several resolutions in which it prayed for the repose of the soul of the martyr King, urged the Government to bring to light the traitors and assassins, and to hand them over to it for punishment. By other resolutions, it placed the lives of the tribal chiefs and the peoples of Afghanistan and all other material resources at the disposal of the new monarch ; condemned the "abuses, immoralities and atheism of the Amanian regime" ; confirmed the election of King Zahir Shah "as our rightful Imam, King, Commander and Father." The fourth resolution ran thus : "We humbly pray the King's Most Gracious Majesty to continue the policy of reform laid down by his martyred father"—a sufficient proof of the political and moral awakening of tribal leaders of Afghanistan.<sup>1</sup>

On November 28, 1933, for the first time in the history of Afghanistan, the King took the Coronation Oath before the joint session of both Houses of Parliament in the following words : "Whereas, by the grace of God Almighty and the united will of the nation, this *servant of Islam* has been elected King of Afghanistan, and our accession to the throne has been approved by all the estates of the nation : We in pursuance of Article 6 of the Fundamental Law of the Realm, have presented ourself here in order that we may take the oath which it is our Royal *duty* to take and sign it in its written form in the name of the prosperity of the country, in the presence of you, the elected representatives of the nation, in Parliament assembled.

"I swear by God and the Holy Koran, taking God Almighty to witness, that in all my acts and deeds, I will de-

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1. For the text of the resolutions of the Loe Jirga see Ahmad and Aziz, *Ibid*, Appendix III, pp. 132-133.

fend the true religion of Islam, the Independence of Afghanistan, protect the rights of the nation, ensure the integrity, progress and prosperity of the Fatherland, and rule according to the established Shariat of Muhammad, may God bless him, and the Fundamental Law of the Kingdom ; so help me God and the pure spirits of the holy saints, on whom be peace." <sup>1</sup>

The King appointed Sirdar Muhammad Hashim Khan, his uncle,—the third brother of the late King Nadir Shah—as his Prime Minister. Thus, the seed of constitutional government, sown by the late King Nadir Shah, began to grow into a healthy sappling under the fostering care of the young King Zahir Shah.

### The Afghan Constitution

The Fundamental Principles of the Government of Afghanistan (*Usul-i-Asasi*), were drawn up by King Nadir Shah with the help of his talented brothers (most of whom are Ministers at present) and were passed by the Afghan Parliament as the Organic Law on October 31, 1931. With an addition of the new clauses on February 22, 1933, this Law is the basis of the modern Afghan Government.

### Fundamental Rights of the Afghan People

The Constitution guarantees the subjects personal liberty, freedom in trade, industry and agriculture, equal rights and duties under the Shariat and the laws of the State ; protection of private property ; inviolability of domicile ; primary education for Afghan children (Art. 20), freedom of publication (Art. 23), secrecy of correspondence through posts (Art. 109) and settlement of disputes by courts of justice. All persons residing in the country, irrespective of creed and religion, are Afghan subjects. Article 11 says : "No one is imprisoned or punished without an order in accordance with

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1. *Op. cit.*, p. 87.

the Shariat law or the appropriate laws." Under Article 15, the Government, in case it acquires private property in public interests, is bound to pay the owner of the property, the value of the property according to the Shariat law and the special code concerned. Levies of money or taxation, not sanctioned by law, or forced labour, are prohibited, "except during the war" (Art. 18). Tortures and punishments not sanctioned by law cannot be inflicted. Art. 21, however, imposes certain restrictions upon educational activities of foreigners in Afghanistan. It says: "Foreigners, with the exceptions of those engaged to teach arts, industries and foreign languages, are not permitted to open and conduct schools in the kingdom of Afghanistan." But Art. 22 guarantees non-interference "with the principles of education which are concerned with the faith and religion of the Ahl-i-Zimma" (i.e. the people of Book, viz, Jews and Christians, who are under the protection of the Moslem ruler). Art. 1 also laid down that "followers of other religions, such as Hinoods and Sikhs, who live in Afghanistan, provided they do not infringe the ordinary rules of conduct and propriety, also enjoy protection." The presence of this conditional clause in the case of the Hindus and Sikhs and its absence in the case of Moslems, Jews and Christians, may remind one of the distinction between Dar-ul-Islam and Dar-ul-Habab.

Though foreign newspapers "which do not contain matters against religion and the policy of Afghan Government" have been accorded unrestricted entry into Afghanistan, yet the right to publish news in Afghanistan belongs *only* to the Government and the Afghan subjects (Art. 23). Foreigners are not accepted in the military employment excepting as doctors and military instructors (Art. 108). All Afghan subjects have the right to make personal petition on matters which the departmental office have neglected to consider, to

the National Council, whose President forwards them to the Prime Minister (Art. 62). But if any unrest or rebellion is apprehended in any part of the country, the Government has power under Art. 104, to take any measures it thinks necessary for the restoration of peace.

### The King

From absolute kingship to constitutional monarchy, from fratricidal wars of succession to orderly, peaceful, hereditary and legally determined succession to the throne, is a long way, and the Afghan monarchy has passed it within a course of four years, 1929-1933. From Suleiman Shah (1733) to King Zahir Shah (8th. Nov. 1933), Afghanistan had 28 successions to the throne, while in England, there were only 8 successions from 1760 to 1936. Mahmud Shah ruled twice (1799 to 1803, and 1809 to 1818); Shah Suja twice (1803-1809 and 1839-1842); Amir Dost Muhammad thrice (1826-1835, 1835-1839, 1843-1863); Sher Ali Khan twice (1863-1867 and 1869-1879); while Sulaiman Shah (1773), Nasrullah Khan (1919), King Inayatullah Khan (1929) and Baccha-i-Saqao (1929) ruled only for several weeks. Thus while the average life of a monarchy in England is 22 years, it is less than 6 years in Afghanistan. In England every case of Royal Succession has been peaceful and constitutional, while in Afghanistan 90 per cent of the successions have been violent and bloody.

Since the election of Nadir as King of Afghanistan things have changed radically. The Government is a constitutional monarchy quite harmonious with the democratic principles of Islam. Nowhere one finds any trace of the Divine Rights of Kings as in Japan or of governmental despotism as in Germany or Italy. Article 5 of the Constitution makes Afghan kingship to a great extent elective. Sirdar Nadir Khan was accepted by the Afghan people as their King in recognition of his services to the country. Art. 5 says: "The noble Afghan nation agrees that the crown of Afghanistan will be trans-



ferred to the family of the King, who desires the progress of the country, and that *succession to the Throne will be in accordance with the selection of His Majesty and the people of Afghanistan.*" Normally, however, the monarchy is hereditary in the house of King Nadir Shah. The crown "shall pass to a brother or son who has attained majority."<sup>1</sup> The King may appoint a successor, but if he fails to do that, an emergency meeting of the National Assembly will be summoned within 20 days from the death of the King (under Art. 64), to nominate a successor. Thus after King Nadir Shah's death on November 8, 1933, an emergency meeting of the State Council was immediately held, and local members of the Parliament were summoned under Art. 5 to elect the new King. Prince Muhammad Nadir Khan, the only son of the late King, was proposed by H. R. H. Sirdar Shah Muhammad Khan, the senior Minister present, and was unanimously accepted. "Never has the throne of Afghanistan witnessed such a quiet succession."<sup>2</sup>

The King of Afghanistan must be a member of the Hanafi sect of Islam. Before he ascends the throne, he must make and sign a declaration laid down in Art. 6, before the members of the Parliament, to rule according to the Shariat, to defend Islam, to preserve the independence of the country, the rights of the nation and to promote the progress and prosperity of the people. The King is the supreme head of the Executive, the Legislature, the Judiciary and the National Army. He enjoys the following prerogatives: His name is mentioned in Friday prayers; coins are struck in his name; he bestows rank, honours, decorations; appoints the Prime Minister, sanctions the appointment, transfer and dismissal of all Ministers (Art. 73); assents to bills passed by the National

1. Ahmad & Aziz—*Op. cit.*, p. 83: also Iqbal Ali Shah—*Modern Afghanistan*, 1938, p. 253.

2. Ahmad & Aziz *Op. cit.*, p. 79.

Council, and proclaims and enforces them. He is the defender of religion, the Commander-in-Chief of the military forces ; he declares war, concludes peace, makes treaties, remits and reduces punishment according to the Shariat (Art. 7). His allowance is provided in the Civil List (Art. 8). He hears final appeals from the decisions of the Courts and the Ministers (Art. 24). He issues Orders-in-Council on urgent matters, during a recess of the National Council, but these are temporary measures to be rejected or approved by the Legislature when it meets (Art. 32). He receives petitions submitted by the National Council through a deputation composed of its own members (Art. 49). He selects and appoints directly the members of the Upper House (Art. 67). He has the right of finally deciding such questions which are not agreed upon by both the "Select Committee" composed of an equal number of members of both Houses, and the National Council (Art. 70). Matters beyond the power of the Prime Minister are submitted for the orders of the King (Art. 78). But "the King is free from all responsibility" (Art. 76). The Ministers are jointly and severally responsible to the National Council for their actions, and Art. 110 enjoins that whenever a verbal order is given by the King or Prime Minister to a Minister or a Civil Servant, the latter should obtain such orders in writing and signed by the King or the Prime Minister. The present monarch Zahir Shah enjoys the loyalty and support of late king Nadir Shah's three brothers—Muhammad Hashim Khan, the Prime Minister, Shah Mahmud Khan, the Minister of War, and Shah Wali Khan, Afghan Minister to Paris, Brussels and Berne. Afghan monarchy is not, of course, as limited as the British. The powers of the King, as Arts. 70 and 78 point out, are not merely nominal. Referring to King Nadir Shah's brothers, two writers remark: "Although their triumvirate has to a great extent controlled the Government since the death of Nadir Shah, the King should not be regarded as a mere figure-head. As he has

grown older (he was only 19 years old when he became King), he has taken an increasingly active part in the administration of his kingdom".<sup>1</sup> But even when the King exercises his prerogatives, the Shariat and the traditions of the Islamic constitutional laws cannot be over-ridden. The King has no doubt been invested with great powers, e. g. it is he only who can declare war or negotiate peace; no bill passed by the Madjliss can become law without his assent; in times of war he can issue urgent ordinances which temporarily override any or all existing laws. But as Prof. Muhammad Ali says, this is "an absolute necessity in a country where democratic institutions are yet in their infancy."<sup>2</sup>

### The Cabinet

Though the King is the supreme head of the State, yet the Government of the country is carried on by the Cabinet. The Prime Minister is appointed by the King, while other Ministers are appointed by the Prime Minister with the approval of the King. Only Moslem subjects of the King can be Ministers. The Prime Minister is the President of the Cabinet. The principles of homogeneity and several and collective responsibility hold good. The number of Ministers, the organisation of the Departments, etc., are determined by Fundamental Regulations (Art. 83). The Cabinet can issue Orders-in-Council as temporary regulations to meet urgent needs during the recess of the National Assembly (Art. 32). The Ministers, may initiate laws on any subject. They can attend the sittings of the National Assembly to hear debates, to explain, with the permission of the President, matters under discussion in the House, and can object to a bill introduced by a private member of the Assembly. They are bound to answer questions asked in the Assembly, without undue delay (Art. 61).

1. A. E. Hudson and E. Bacon—*Inside Afghanistan in Asia*, March 1940, p. 119.

2. *Guide to Afghanistan—Op. cit.*, p. 59.

Under Art. 52, a Minister can demand a secret meeting of the Assembly, and the setting up of a Secret Committee, the deliberations of which may not be published without his permission. The Ministers may withdraw a bill at any stage. A bill rejected by the Assembly may be introduced by them for fresh reading when they may accept or refute the observations of the Assembly. Ministerial responsibility has been established by Art. 76: "Ministers are responsible to the National Assembly as regards the policy of the Government in general, and the Ministry under the charge in particular. His Majesty the King is, therefore, free from all responsibility." When a Minister is suspected of any administrative offence, he is to take his trial in the Diwan-i-Ali (Supreme Court), and is to be suspended from public duties until the case is decided and he is acquitted. The Ministers as well as other Government servants are under the general supervision of a "Committee of Enquiry" set up by the National Assembly, from amongst its members with the permission of the King (Art. 82). But the most interesting thing about the Afghan Cabinet is this that the Ministers are not members of either Houses of the Legislature.

There are now eleven Departments, each in charge of a Minister, viz., War, State, Foreign Affairs, Interior, Justice, Finance, Education, Commerce, Public Works, Health and Posts and Telegraphs. Besides these Ministers, the Cabinet includes the following officials: (1) the President of the Senate, (2) the President of the National Assembly, (3) Director-General of Mines and (4) Director-General of Agriculture. The Minister of the Royal Court and the Chief Secretary to His Majesty the King are Ministers, but without seats in the Cabinet.

*The War Ministry:* Afghan Army was organised by ex-King Amanullah and the late King Nadir Shah, on modern lines, equipped with up-to-date weapons. In Kabul there is

at present a Military Academy for the training of Cadets and also the Maktab-i-Ihzaria for the sons of the tribal chiefs. There is also a Military College (Course-i-Ali) for the military training of high officers. The peace strength of the Army is 70,000 standing, besides the warlike tribesmen and trained reserve. The Army is recruited by conscription called Pishak or by voluntary enlistment, which is life-long. There is also a small air force manned by foreign-trained Afghans. Military service is compulsory for two years for all Afghan adults between 18 and 40.

*The Education Ministry :* It has set up a Bureau of Education which has published many books on important subjects. Pashtu has been made the national language, and all instructions are now given through it. Various Faculties of Science, dealing with Biology, Minerology, Physics, Chemistry, Mathematics, Arts, Archeology, Medicine, Agriculture, Educational training, etc., have been started. Students are encouraged for higher studies in all possible ways, e.g. by free gift of books, free tuition, handsome stipends, etc. Faculty students get free meals and clothing, over and above their monthly stipends, while brilliant students are generally sent abroad on State expenses for higher knowledge. The Department has also tried to put an impetus to the growth of journalism in the country. Women are being emancipated, but not offending Islamic susceptibilities ; and "the co-operation of the clergy is sought rather than their submersion as in Amanullah's time"<sup>1</sup> for the propagation of education.

*The Finance and other Ministries :* The Ministry of Finance has stopped all corruptions and defalcations. The revenues of the country are raised from stamp duty, seigniorage, taxes on animals, land, and customs, the latter

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1. Iqbal Ali Shah—*Nadir Shah and After in Contemporary Review*. March, 1934. p. 339.

providing two-thirds of the entire revenue (150 million Afghan rupees i.e., near about 38 million Indian rupees.) The budget is generally a surplus one ; and the public debt is negligible. In 1933 the Afghan National Bank was established at Kabul with a capital of 35 million Afghan rupees, of which one-third was subscribed by the Afghan Government. The Ministry of Public Works has constructed many big roads from Kabul to Quetta, Peshwar and Temez on the Oxus, and Kushk on the Russian border. Many new cities have been built and old ones improved. The Commerce Department has developed the trade of the country unprecedentedly. The total export trade amounts to £5,000 000. The imports from Russia were in 1914 half of those from British India, but in 1932 the imports from these two countries into Afghanistan were nearly equal. (Russia—£ 1,500,000 ; British India—£1,600,000).<sup>1</sup> The Department of Agriculture has introduced Egyptian and American cotton seeds in the country. Improved varieties of sugar cane, raw-sugar factories at Jalalabad, silk-worm industries under French trained Afghans, woolen shawls and cloth factories etc., are some of the interesting features in the economic life of modern Afghanistan.

#### The National Assembly

The Afghan Legislature is composed of the King and the two Houses, the National Assembly and the House of Nobles. The National Assembly (Shura-i-Milli) is composed of the "representatives of all the inhabitants of the country", elected from the various provinces and assembling at Kabul (Arts. 28-29). The total number of members is 120.<sup>2</sup> A member must be between 25 and 70 years in age, educated, of good repute and not a Government employee. He must also possess the

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1. Violet Conolly—*The Soviet Union and the Industrialisation of Asia*—in *Foreign Affairs*, October, 1936, pp. 187-198,

2. This figure is given by Prof. Muhammad Ali and Sirdar Iqbal Ali Shah ; but, in *Statesman Year Book*, 1940, p. 677, the number is 109.

qualifications of a voter. One member is returned by "each constituency of about 100,000 inhabitants. "All Afghan subjects over the age of 20, who are neither bankrupt nor convicted of criminal offences, nor legally incapable of managing their own affairs, and who have resided within the constituency for at least one year, are electors." Men and officers of the Army and police may neither elect nor be elected. It is to be noted that the suffrage is not restricted by a property qualification.

The term of the Assembly is three years, and the members are re-eligible. The Assembly elects its President, Vice-President, and prepares the standing rules. The members are to take an oath of loyalty to the nation and the "Government." They have full liberty of discussion and voting. The quorum is formed by half of the members, and decisions are taken by majority. When the Assembly is in recess, it may be summoned to discuss urgent questions and if it is impossible for representatives to meet, "the members of Kabul and neighbouring districts only will hold a meeting of the Assembly"—a provision which reminds one of the Persian Constitution. During the recess of the Assembly, the King can issue regulations as temporary measures, but such regulations are to be produced before the next meeting of the Assembly and are to stand or fall according to the wish of the Assembly (Arts. 32-35).

The Assembly possesses "full deliberative, advisory and legislative powers in every department of the Government".<sup>1</sup> All laws and regulations have got to be passed by the Assembly. (Art. 41). All financial measures, proposals of new taxation, expenditure, the national budget, etc., are examined and passed by the Assembly. All loans, external or internal contracts, agreements and grants of concessions "whether relating to trade, industry, agriculture, etc., and whether

1. Ahmad and Aziz, *Op. cit.*, p. 74.

Afghan or foreign," the extension of public highways and the building of railways, by whomsoever, require the approval of the Assembly (Arts. 46-48). The Assembly has the right of submitting petitions to the King through a deputation composed of the President and six other members selected by it from amongst its members. These provisions are, again, reminiscent of the Iranian Constitution. Under Art. 52, a secret meeting of the Assembly may be called or a Secret Committee composed of certain selected members of the Assembly, may be formed by the President on his own motion, or on the motion of ten members of the Assembly, or on that of a Minister, to discuss important matters in camera. Other members of the Assembly and outsiders, including the press, may be excluded from such meetings. The resolutions of these meetings will be regarded as legitimately passed "provided the matter is discussed in the presence of three-quarters of the selected members and supported by a majority of votes."

Every Bill introduced by a member of the Assembly, in order to be an Act, must pass through a first reading when it will be debated, provided at least a quarter of the members approve of it. Then it will be sent by the President to a Select Committee composed of at least ten members, which will examine and report on it. Then there will be the second reading of the Bill. It may be passed or rejected or returned to the Ministry concerned with observations. When a Minister is interested in a Bill, a copy of it should be forwarded by the Assembly to him ten to fifteen days in advance of the discussion. Ministers are bound to reply to any questions asked by the members of the National Assembly without undue delay (Art. 61). The Bill passed by the National Assembly and signed by the King becomes an Act (Art. 66). When the King is dead and the Assembly is not in session, it must meet within 20 days at the latest, and if the term of



office of the members has expired before the death of the King and a new Assembly has not yet been elected, the members of the former Assembly will meet to form the new one (Art. 64). This provision is very necessary in a country like Afghanistan where monarchical stability is constantly threatened by possibilities of internal revolts. This provision also occurs in the Iranian Constitution. The legislative competence of the Afghan Parliament is, however, determined by Art. 65, in a manner which is so common in the Islamic countries. This Article says : "Measures passed by the Assembly should not contravene the canons of the religion of Islam or the policy of the country." The first Assembly under the new Constitution was opened by the late King Nadir Shah on September 10, 1931. It held three ordinary sessions in three years to transact normal business, and one extraordinary session on the melancholy occasion of the assassination of the King, and for the administration of oath to his son and successor, King Zahir Shah.

### The Afghan Senate

The Afghan Senate (Medjliss-i-Ali-i-Ayan) is composed of 45 members nominated by the King for life.<sup>1</sup> The powers of the Senate are not clear. It seems that if a Bill, initiated by a Minister, is passed by the Assembly and is assented to by the King, it will automatically come into force, if the Upper House is not in session (Arts. 44, 51, 66, 69). But if a Bill is passed by the Senate and rejected by the Assembly when sent to it for approval, the Bill, according to its importance, will be submitted to a Joint Committee of the two Houses, composed of an equal number of members from each, the minimum number being 20. If the decision of the Committee is opposed by the Assembly, then "the matter will be referred to His Majesty the King and decided under

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1. Statesman Year Book, 1940, p. 677. Iqbal Ali Shah puts the membership at 40 (*Op. cit.*, p. 254) ; Prof. Muhammad Ali puts it at 60 (*Op. cit.*, p. 59),

his exalted direction" (Art. 70). The Senate sits throughout the year, while the National Assembly sits from May to October. In financial matters, the approval of the National Assembly must be obtained; in other matters, if the two Houses disagree final decision rests with the King.

Besides these two legislative bodies, there is another, a bigger Assembly, the Loe Jirga, summoned almost every four years to discuss very important State-matters. It is composed of the high dignitaries of the State, the tribal chiefs, the representatives of the people, the Ministers, the Presidents of the Senate and the Assembly, etc. The Loe Jirga summoned on November 18, 1933, after the death of King Nadir Shah, placed the lives of the tribal chiefs and the peoples of Afghanistan at the disposal of the new monarch, King Zahir Shah, confirmed his election to the throne, condemned the abuses of the Amanian regime and urged the new King to carry out the reforms proposed by his martyred father. The Loe Jirga meets under the presidency of the King.

#### Local Administration

For local administration the entire country has been divided into five major provinces (Vilayets) and four minor provinces (Hakumat-i-Ala). Each Vilayet has a Governor (Vali or Naib-ul-Hakumat) and each minor province a chief Administrator (Hakim-i-Ala) at its head. The major provinces are: Kabul, Mazar, Kandahar, Herat and Khatagan-Badakshan. The four minor provinces are: Simat-i-Mashriqi (i. e. eastern province of Jalalabad), Simat-i-Junubi (i. e. southern province of Gardez), Farah and Maimanah. The Governors and Chief Administrators are appointed by the King and carry on the executive functions with the help of Executive Councils composed of local heads of departments. Under Art. 71, there is a Consultative Assembly (Medjliss-i-Mashwarah) in each province composed of the

elected representatives of the inhabitants, under the presidency of the local Governor or Chief Administrator. The provinces have again been divided into three classes of prefectures (Hakumat) according to their size and importance. Several prefectures combine together to form a district (Hakumat-i-Kalan) which is governed by an Administrator (Hakim-i-Kalan) who is subordinate to the provincial Government. Each district has also an Executive Council and a Consultative Assembly. Some prefectures are again subdivided into cantons (Ilaqahdari). There are now altogether 21 districts, divided into 98 prefectures of which 27 are first class, 36 second class and the rest third class. There are altogether 162 cantons. Every town having a population of over 10,000 has a municipality (Baladiyah) whose Mayor (Rais) is elected, subject to the approval of the provincial Governments. No difference exists between municipal and national franchise. The Afghan police is organised on a provincial basis, under the general control of an Under-Secretary of the Home Department. The Intelligence Department is quite separate from the ordinary police, though it works in close collaboration with the latter. The old tribal system is still prevalent. But the appointments, succession and removal of the Khans (tribal chiefs) and Maliks (headmen) are now vested in the King. These chiefs still form the landed aristocracy, and exercise considerable influence over the people by furnishing the tribal quota of conscripts, assisting the police in the apprehension of offenders, and sometimes by deciding cases in their Jirgas, (tribal councils). Many of them are elected to the National Assembly, and the ablest of them are appointed by the King in the Senate. But the control of the Central Government over them is now infinitely greater than ever before. For better administration, every civil servant is required by law to obey his superiors. But when a subordinate is ordered by a superior to do something in contravention of

the administrative regulations, he is required to "report to the central office of his Ministry or the Prime Minister" before he takes any action (Arts. 85, 102). The civil servants are posted in the provinces from each Ministry separately (Art. 103), but they are guaranteed the security of tenure and promotion "unless they resign or the exigencies of Government service require their transfer or dismissal" (Arts. 84, 103).

### The Afghan Judicial System

The entire Judicial System of the country is based on the Shariat (Art. 88). The independence of the Judiciary is guaranteed by Art. 89. Justice cannot be delayed. Setting up of special tribunals to settle particular cases out of court is strictly prohibited. Trial must be open except when the judge directs otherwise. The lowest courts are the Mahakamah-i-Ibtidaiah i.e. the courts of first instance at the headquarters of the prefectures, 106 in number. Appeals from these courts lie to the provincial Courts of Appeal (Mahakamah-i-Murafiah), 19 in number, from whose decisions, again, final appeals lie to the Supreme Court at Kabul (Mahakamah-i-Tamiz). The tribal arbitration committees (Jirghas) also exercise some judicial powers under the law, while petty criminal cases are disposed of by the Kotwals, appeals from whose decisions lie to the provincial Governor. Trans-frontier disputes are decided by periodic joint commissions of the affected powers. Commercial disputes are settled by permanent Boards of Commercial Arbitration sitting at provincial headquarters. Art. 95 makes provision for the setting up of the Diwan-i-Ali (Supreme Court) for the trial of Ministers, but this Court is to be dissolved after such cases have been dealt with.<sup>1</sup>

1. For the text of the Fundamental Law (*Qanun-i-Asasi*), see Brt. and For. State Papers, 1931, Vol. CXXXIV, pp. 1192-1204.

## CHAPTER VI

### IRAQ

On November 5, 1914, France and England declared war on Turkey, and on that very date Great Britain sent an Indian force of 5000 troops to Mesopotamia "to secure the neutrality of the Arabs, to safeguard our interests in the Persian Gulf, to protect the oil fields, and generally to maintain the authority of our flag in the East"<sup>1</sup> After several reverses, General Maude succeeded in defeating the Turks, and entering Baghdad on March 11, 1917, he issued a Proclamation, sanctioned by the War Cabinet which included, inter alia, the following: "Our Armies have not come into your cities and lands as conquerors or enemies, but as Liberators.....the British Govt. (does not want) to impose upon you (the people of Baghdad) alien institutions, .....I am commanded to invite you through your Nobles and Elders and representatives, to participate in the management of your civil affairs in collaboration with the Political Representatives of Great Britain, who accompany the British Army so that you may unite with your kinsmen in the North, East, South and West in realising the aspirations of your race"<sup>2</sup> The General Officer Commanding was assisted by a Chief Political Officer (Sir Percy Cox) for the establishment of civil government along Indian lines under military

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1. Speech of Mr. Asquith, in the House of Commons on Nov 2, 1915, quoted by H. A. Foster, in his "*The Making of Modern Iraq*", (1936), p. 37.

2. For the text of the Proclamation, See-W. Ireland—*Iraq, A Study in Political Thought*, (1937), p. 457, Appendix (I).

supervision. On March 29, 1917, the government of the occupied territories was transferred from the India Govt. to H. M. Government at London. But the political future of the country still hang in the balance as no definite policy had yet been chalked out. The various secret pacts were going to turn Iraq including Mosul into a British protectorate, when on January 8, 1918, the famous Fourteen Points of President Wilson upset the whole plan. Point 12 contained the following important declaration : "The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development."<sup>1</sup>

On June 16, 1918, Commander Hogarth conveyed a message of the British Govt. to the seven Arab leaders who had assembled in Cairo to demand Arab independence in accordance with Marshall Macmahon's promises to King Hussein of Mecca. This message declared that "areas formerly under Ottoman dominion occupied by the Allied forces during the present war" i.e., Mesopotamia, Syria and Palestine, should be governed "upon the principle of the consent of the governed". The Armistice of Mudros was signed on October 30, 1918, and on November 7, 1918, the joint Anglo-French Declaration gave an assurance to the Iraqi people that it was the intention of Great Britain and France to establish "national Governments and Administrations deriving their authority from the initiative and free choice of the indigenous populations."<sup>2</sup> This declaration evoked the displeasure of Sir A. T. Wilson, the Acting Civil Commissioner in Iraq, who wanted the British Government

1. Ray Stannard Baker-*Woodrow Wilson and the World Settlement*—Vol. 3, p. 4.

2. For the text of the Declaration—see *Ireland.*, *Ibid.*, pp. 469-70,

to exploit the valuable oil fields of the country instead of establishing any indigenous government there. In fact, as Main points out, the declaration was a mere "lip-service to the doctrines of Woodrow Wilson, while Clemenceau and Lloyd George were getting on with the business."<sup>1</sup> In the Peace conference of Paris, France agreed to the establishment of a British mandate over Iraq including Mosul, and Palestine, provided Britain gave her a right to share in the oil of Mosul, and a mandate over Syria, where Feisal, assisted by British gold had already set up an Arab administration. From November, 1918 to May, 1919 various communications were held between the acting Civil Commissioner of Iraq and H. M. Government, as to the appropriate form of Government that was to be set up in Iraq. The general agreement was that a plebiscite should be held about the proposal of an "Arab State under Arab Amir," responsible to a British High Commissioner. A plebiscite was actually held but strictly manipulated by the Acting Civil Commissioner. What became clear was this that there was a general demand for the inclusion of Mosul into Iraq; but as regards British protectorate and as to who should be the Arab Amir, there were acute differences of opinions. Mr. Lawrence of Arabia fame, was all throughout striving to set up an independent Iraqi State under Feisal who had served the Allies so well as commander-in-chief of the Arab forces.

The Treaty of Versailles was signed on June 28, 1919, and Article 22 of the Covenant set up the principle of Mandate Administration for territories belonging to the former Turkish Empire. The Iraqis at once regarded themselves as deceived by the Allies. Discontent rapidly grew up all over the country, and every Moslem Arab of education in Baghdad became member of secret societies whose objects were to

1. Iraq - *From Mandate to Independence* (1935), p. 62.

drive out the English and set up a pan-Arab independent State.<sup>1</sup> The San Remo Conference of April 24, 1920, allocated the Mandate over Syria to France and those over Palestine and Mesopotamia to Great Britain. King Feisal was soon driven out from Damascus by the French, though he "pleaded that Britain should not abandon him". The nationalist leaders and supporters of Feisal returned to Iraq, and carried on a tearing and raging campaign against the British administration at Baghdad. The whole country suddenly rose in an insurrection against the Mandate policy and for five or six months ending with November, 1920, there were disturbances everywhere. A Constitutional Committee presided over by Sir E. Bonham Carter submitted its report to the Acting Civil Commissioner on April 26, 1920. It recommended the setting up of a Council and an Assembly, the former invested with dominant executive and legislative powers, though its members were to be appointed and removed by the High Commissioner at his pleasure. The elected Assembly of 50 members was not given even the power to control the budget. The Council was constituted of six English members who were to be called Secretaries, and five Arab members who were to be Advisers to these Secretaries, all presided over by a powerless Arab President. Real power was confined in the hands of the High Commissioner. There was also to be a periodic enquiry every seven years into the desirability of "extending or restricting self-government" in Iraq.

His Majesty's Government, however, insisted upon a more popular and responsible form of government in Iraq with a view to preparing "the way for the creation of an independent Arab State", and rejected the niggardly proposals of the Committee as well as the reactionary opinions of the Acting Civil Commissioner. The Inter-departmental

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1. Ireland—*Op. cit.*, p. 195.



Committee in London suggested the "Indian State" ideal as the solution of the problem, while Mr. Montagu, the Secretary of State for India, proposed a *treaty* with Iraq for carrying out the responsibilities of the Mandatory. On June 17, 1920, at last, H. M. Government sent the text of an announcement to Baghdad, which was made public on June 20, by the Acting Civil Commissioner. It contained the following : "His Majesty's Government having been entrusted with the Mandate for Mesopotamia anticipate that the Mandate will constitute Mesopotamia an independent State under the guarantee of the League of Nations and subject to the Mandate to Great Britain ; that it will lay on them the responsibility for the maintenance of internal peace and external security, and will require them to formulate an organic law to be framed in consultation with the people of Mesopotamia, and with due regard to the rights, wishes and interests of all the communities of the country". It also included the announcement that Sir Percy Cox would be the coming High Commissioner, and he would be authorised to terminate the military administration on his arrival in Iraq, and to "call into being provisional bodies, a Council of State under an Arab President, and a General Elective Assembly, representative of and freely elected by the population of Mesopotamia, and it will be his duty to prepare, in consultation with the General Elective Assembly, the permanent Organic Law".<sup>1</sup>

On October 11, 1920, Sir Percy arrived at Baghdad, and on October 21, he proposed the setting up of a provisional Government, a Council of Arab Ministers, supervised by British Advisers, and under the control of the High Commissioner. The Nagib of Baghdad consented to become the President of the first Arab Council of State of Iraq, which

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1. Review of the Civil Administration of Mesopotamia—*Cmd.* 1061 of 1920, p. 142.

met for the first time on November 2, 1920. On November 11, the High Commissioner declared in a formal announcement that (1) there shall be constituted a Council of State consisting of a President, Ministers for the following departments. Interior, Finance, Justice, Wakf, Education and Health, Defence, Public Works, Commerce, and such other members without portfolios as may be nominated ; (2) until the organic law is promulgated and brought into effect, the Council of State and Ministers shall be responsible for the conduct, subject to my supervision and control, of the administration of the Government. excluding foreign affairs, military operations and general military affairs, except such military affairs as concern solely the locally recruited forces." <sup>1</sup> On November 13, 1920, in the third meeting of the Council, the 'Instructions for the Council of State' determining the relations between the Arab Ministers and their British Advisers, was finally adopted, and became, so to say, "the first constitution of Iraq."<sup>2</sup> The Arab Ministers were declared as responsible heads of their respective Departments of State, subject to (1) the control of the Council of State ; (2) the advice of the British Advisers and (3) the supreme authority of the High Commissioner.<sup>3</sup> The country was divided into several Liwas (ten) and at the head of each an Arab officer was appointed, helped by an English Adviser.

In December 1920, the boundary line between Iraq and Syria was provisionally settled,<sup>4</sup> while in March 1921, a conference to discuss the Middle East affairs was held in Cairo. The Arab groups were represented, while Mr. Churchill, then Colonial Secretary, was the leading figure in all

1. Report on Iraq Administration, 1920-1922, Appendix. 1. p. 123.

2. Ireland—*Op. cit.*, p. 286.

3. For the text of the Instructions, Ireland—*Op. cit.*, pp. 461-464.

4. *Cmd.* 1195 of 1921 ; also Toynbee—*Survey of International Affairs*, 1925, Vol. 1, p. 465.

the deliberations. The conference decided the political fate of the Arab territories and deliberated whether an Iraqi Congress or Assembly should propose Feisal as King of Iraq. Mr. Churchill stated that "he knew of no precedent for allowing a Constituent Assembly to choose its own ruler", quite forgetful of the fact that in his own country, the convocation Parliament of 1659 had offered the Crown of England to Charles II. However, it was almost agreed upon that Abdullah, King Hussein's eldest son, was to be given the throne of Trans-Jordan, while Feisal, the third son of Hussein, was to be made King of Iraq. The most important decision of the conference was that the British Government would clear out of Iraq provided the security of British communications from the Eastern Mediterranean to the head of the Persian Gulf were assured. This assurance Feisal was prepared to give them by way of an Anglo-Iraqi treaty.

The British Govt. now began to support the candidature of Feisal for the throne of Iraq. The Nagib, who had so long opposed Feisal, now withdrew his opposition, while Feisal's only rival, Seyed Talib Pasha, was suddenly kidnapped and exiled to Ceylon. On July 11, the Council of State decided that Feisal should be "King of Iraq provided that his Highness's Government shall be constitutional, representative and democratic and limited by law". A show of a plebiscite was held in which every effort was taken to ensure the desired results; some Liwas (e. g. Sulaimaniya) took no part in the referendum, while others (e. g. Kirkuk) voted against Feisal. However, 96% of the votes were shown in favour of Feisal, and on August 23, 1921, he was proclaimed King of Iraq by the High Commissioner. The High Commissioner declared:—"The Council of State has in pursuance of the proposal of the Prime Minister unanimously agreed to proclaim the Amir Feisal as King of Iraq, in their meeting held on the 24th of Dil-Qada, 1339 (July 11th, 1921), on

condition that his Government should be constitutional, parliamentary, democratic and bound by law. In my capacity as the representative of His Majesty the King of Britain, I have considered it necessary to sound the collective opinion of the people of Iraq, before giving my consent to that decision. Upon my wish a plebiscite has been held, the result of which shows that 97 per cent of the voters are agreed as to the proclamation of Amir Feisal as King of Iraq. I, therefore, declare that His Highness the Amir Feisal, the son of King Hussain, has been *elected* King of Iraq, and that His Britannic Majesty's Government has recognised His Majesty as King of Iraq. Long live the King !"

The Council of Ministers subsequently met and sent the following letter to His Majesty. "Your Majesty ! The practice in force in Constitutional States necessitates that the Cabinet should withdraw when a change occurs in the form of Government. As the accession of Your Majesty to the throne of Iraq and the establishment of a permanent Constitutional Government are two happy changes, I have, therefore, together with my colleagues, withdrawn from office".<sup>1</sup>

On September 10, 1921, by a Royal Iradah the Cabinet was reconstituted under the premiership of Abdul Rahman Effendi at Naqib, and Iraq began her career of constitutional though not responsible government. The positions of the High Commissioner, the King and the Ministers have been aptly described by Foster as follows :—"The King and the High Commissioner agreed that every executive and legislative decision taken by the Iraqi Government should from that date (August 23, 1921) be taken in the form of a resolution of the Council of Ministers which had to be submitted to the King for his approval. A copy of the resolution was at the same time to be sent to the High Commissioner and the *King undertook not to approve of it until he had either received*

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1. *The Iraqi Directory*, 1936.

the comments of the High Commissioner upon it or been told that he desired to make no comments. Any objection which the Commissioner might raise to the action proposed, any modification in it which he considered desirable, would ultimately be communicated to the Council in the form of a royal command from the the King himself". In simple words, the King was irresponsible to the Council of Ministers and responsible to the High Commissioner.<sup>1</sup>

The draft Mandate for Iraq was drawn up and promulgated,<sup>2</sup> but it soon met with organised resistance from all quarters. Indeed the British Government had already agreed to replace the Mandate by a treaty in the Cairo Conference where "Sir Percy", as Miss Getrude Bell writes, "has urged that we shall drop the Mandate altogether and go for a treaty with the Arab State when it is constituted". Hence, the British plenipotentiary, Rt. Hon. H. A. L. Fisher, declared on November 17, 1921, in the Council of the League of Nations that Great Britain believed that British obligations under the Mandate could be best discharged by the conclusion of a treaty with Iraq, though the Mandate was to "remain the operation document defining the obligations undertaken by H. M. Government on behalf of the League of Nations".<sup>3</sup> The drafting of the Treaty, however, became a difficult task. The British Government demanded that the Treaty must contain all the essential elements in the Mandate, empowering H. M. Government to discharge all its obligations to the League. The King's sympathy was distinctly with the Nationalists, but he had to bow down to the High Commissioner. Ultimately, Article 3 of the Treaty reproduced the obligations of the Mandatory for framing an organic law contained in Articles 1 and 8 of

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1. Foster—*Op. cit.*, p. 231.

2. *Cmd.*, 1176 and 1500 of 1921 for original and final drafts of the Mandate.

3. Ireland—*Op. cit.*, p. 340.

the' Mandate ; Article 8 of the Treaty reproduced the provisions of Article 4 of the Mandate forbidding leasing or ceding of Iraqi territories to foreigners. Art 9 of the Treaty contained the provisions of Art. 6, declaring the abolition of all capitulatory rights in Iraq, and so on. This draft of the Treaty, as approved by the Colonial Office, was strongly opposed by the Iraqi Council of Ministers, while the various national parties, Hazb at Watani, Hizb an Nahdha, Hizb at Hurr, etc, demanded its rejection. The Ministry of the Naqib resigned. But Sir Percy became obdurate and at last, after the recovery of the King from his recent illness and the return of the Naqib, the Anglo-Iraqi Treaty was signed by the Council, but subject to the condition that it must be ratified by the National Assembly.

The Treaty did not declare Iraq a Sovereign State ; but Great Britain engaged to give Iraq advice and help at her request "without prejudice to Iraq's national sovereignty". Great Britain was to be represented in Iraq by a High Commissioner (Art. 1). Art. 3 declared : "His Majesty the King of Iraq agrees to frame an Organic Law for presentation to the Constituent Assembly of Iraq and to give effect to the said Law, which shall contain nothing contrary to the provisions of the present Treaty, and shall take account of the rights, wishes and interests of all populations inhabiting Iraq". In foreign and financial relations, Iraq was to be guided by the advice of His Britannic Majesty tendered through the High Commissioner during the period of the Treaty (Art. 4.). Article 6 of the Treaty provided that as soon as the frontiers of the new State were defined and a stable constitutional government formed, negotiations should begin on the application of Iraq for the membership of the League of Nations, which was the sole means by which the Mandate could be terminated. Art. 13 provided that the Treaty must be ratified by the Constituent Assembly of Iraq and would

remain in force for 25 years from the date of ratification, unless before that date Art. 6 had come into effect, or the provisions of the Treaty had been revised. Other Articles of the Treaty provided for the conclusion of supplementary agreements regarding military, judicial and financial matters (which were completed on the 25th. of March, 1924). Disputes as to the interpretation of the Treaty were to be referred not to Geneva but to the Permanent Court of International Justice at the Hague. The Treaty provisions might be revised from time to time, if the parties so agreed.<sup>1</sup>

On October 21, writs were issued by royal decrees for the election of the National Constituent Assembly, under the Electoral Law of May 1, 1922. The draft of this law was prepared by a committee under the presidency of Seyed Talib Pasha, set up as early as July, 1920, under the instructions of the Acting Civil Commissioner. It was then submitted to the High Commissioner, Sir Percy Cox, on November 7, 1920. The Council of State referred it to a special committee. But the difficulties about the representation of the tribes, the growing unrest in the country, etc. prevented the specific formulation of this law until March 4, 1922, when it was promulgated. In this electoral law it was definitely mentioned that the function of the Assembly elected under this law was to be strictly confined to the ratification of the three documents only, viz., the Organic Law, the Electoral Law itself and the Anglo-Iraqi Treaty of 1922. Election was to be held by two stages. All male citizens of 21 years and over, paying taxes to the Government, were given primary votes; for every 250 primary voters there was to be a secondary elector (Art. 7). But members of the Legislature must be at least 30 years old, know how to read and write and must reside within their respective constituencies (Art. 8). There were to be 100 members, 80 chosen

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1. For the text of the Treaty and the subsidiary Agreements, see *L. N. Treaty Series XXXV*, pp. 14-15; also *Cmd.* 1757 of 1922.

by the villages and towns (including 5 seats for the Jews and the Christians) and 20 by the tribes.

Unfortunately, the Shiah clergy exhorted the people to boycott the elections, and almost all nationalists strongly opposed the 20 years term of the Anglo-Iraqi Treaty. Under these circumstances, the elections could not be safely conducted and the National Assembly could not meet in its stipulated time. Sir Percy, however, succeeded in persuading H. M. Government in U. K. to reduce the duration of the Treaty from 20 to 4 years, in deference to public opinion in Iraq. A supplementary Protocol to that effect was brought by Sir Percy from London, and signed by the Iraqi Council on April 30, 1923, which fixed the life of the Treaty to 4 years from the date of the ratification of the Peace Treaty with Turkey who was then causing much trouble to Iraq.<sup>1</sup> On July 24, 1923, the Treaty of Lausanne was signed between Great Britain and Turkey. On September 15, 1923, Sir Henry Dobbs succeeded Sir Percy, and by the end of that year elections were completed.

In the meantime, preparations were going on for the drafting of the Organic Law. The British drafters had several obligations to fulfil, viz, that the Organic Law must contain nothing contrary to the Anglo-Iraqi Treaty of 1922; that it takes account of the "rights, wishes and interests of all populations inhabiting Iraq"; that it ensures complete freedom of conscience, worship and the cultural development of all minorities in Iraq, i.e., all those obligations contained in Article 3 of the Treaty and, therefore, also in the Mandate. It was an important condition that the Government of Iraq should be "constitutional, representative and democratic, limited by law" i.e., the condition subject to which King Feisal ascended the throne. The Constitution was to contain addi-

1. For the Protocol of April 1923, see *Cmd*, 2370 of 1925.



tional provisions enabling the British Government to discharge her responsibilities as a Mandatory Power to the League of Nations. The English drafters thought that all these could be provided for first by reserving as much executive and legislative power as possible to the King and, through him, to the High Commissioner in his advisory capacity; secondly, by depriving the elected Chamber of all obstructive powers; and thirdly, by making any amendment to the constitution almost impossible. A draft was accordingly drawn up at Baghdad as early as the autumn of 1921, by Major H. W. Young of the Middle East Department of the Colonial Office, and Mr. M. E. Drower, Adviser to the Ministry of Justice. The draft contained provisions taken from Australian and New Zealand Constitutions. After King Feisal had accepted it in principle, it was taken to London. The draft required the King's preliminary approval to all legislations. All matters relating to the Treaty of 1922 could be dealt with by the King in Council alone (Art. 30 of the Draft). The King was empowered to modify all legislations.

The Baghdad Committee, to whom the draft was referred, opposed it on many points, and drew up a new draft of its own, taking liberally from the Ottoman and Japanese Constitutions.<sup>1</sup> This second draft provided for a bicameral legislature, a Senate of 20 appointed members and an elected Chamber. The Deputies were empowered to initiate legislation excepting money bills; disputes between the two Houses were to be settled by a joint committee of 40 (20 Senators and 20 Deputies selected by lot,—Art. 62 of the second draft). It was also provided that no amendment to the Constitution could be made "until 8 years from its date of coming into force". The British Colonial Office revised this draft and submitted it to a Committee of Naji Pasha and Mr. M. E. Drower. The work of this Committee, known

1. Ireland *Op cit.*, p. 374.

as the Baghdad re-draft, further reduced the powers of the King. The Ministers were made responsible to Parliament. The King's right of preliminary approval of all legislation and of dissolving the Senate was withdrawn. But the Judicial Adviser proposed that the King should be empowered to legislate by ordinances in matters relating to supplies and the Treaty obligations. The Iraqi Ministers, however, opposed this. Meanwhile, the British General Election of 1922 enabled the Iraqi issues to be brought before the English public who were eager for settling matters in Iraq by a clean evacuation. The Cabinet of Bonar Law allowed the duration of the Anglo-Iraqi Treaty to be reduced from 20 to 4 years by a Protocol, of April 30, 1923. A few days ago, the Secretary of State for the Colonies had come to the conclusion that a provision empowering the King to legislate by ordinances for the purpose of securing the fulfilment of Treaty obligations of the Iraqi Government would be enough, and no separate provision for ensuring "supplies" was necessary. But the principle that Finance Bills were to be initiated by a Minister was insisted upon. The provisions restricting powers of amending the Constitution were dropped, while a new provision ensuring observance by Iraqi Government of its international engagements was added. This April Revise was finally agreed upon by both the Colonial Office and the Iraqi Council of State by September, 1923.

The primary elections for the Constituent Assembly were completed in December, and the secondary elections on February 5, 1924. On 24th March, the King opened the Assembly with a speech from the throne. 84 members were present. They were asked by the King to give their verdict on the Organic Law, the Electoral Law and the Treaty. Several groups led by Yasin Pasha, Naji Pasha as-Suwaidi, Rauf Beg Chadarchi and Sheik Salim at Khaiyun (tribal leader), opposed the Treaty on different grounds. Outside

the Assembly it met with greater opposition from the Nationalists. But the British Government refused to amend the Treaty any further. The Cabinet of Jafar Pasha resigned, but as Yasin Pasha, the Chairman of the Treaty Committee of the Chamber, refused to form a Cabinet, Jafar Pasha was persuaded to carry on. The Treaty Committee also recommended amendments to both the Treaty and the subsidiary Agreements which were by this time completed. By the British Officials Agreement, Iraq was bound to appoint British officials on contract, in 18 specified posts, viz, Advisers in the Ministries of Interior, Finance, Defence, Justice Communication and Works; Directors or Inspectors of Irrigation, Public Works, Agriculture, Land Registration, Surveys, Veterinary Service, Police, Post Office, Health, Education, Customs and Excise, Court of Appeal and Government Audit. Every British adviser received letter of appointment from the High Commissioner in which the following, *inter alia*, was written :—"The Secretary of State desires me (H. Com.) to point out to you that although you and your colleagues will not be officially responsible to His Britannic Majesty's Government, your appointment has only been approved in full confidence that you will use your influence to secure the attainment of these objects" viz, (1) that the interests of foreigners are adequately protected, (2) that the financial interests of the British Government are safeguarded, (3) that the best possible use is made of the country, and (4) that the administration conforms to the traditions and principles of progressive and enlightened government. "By the Military Agreement it was agreed that Iraq should take at the earliest possible date full responsibility for both internal order and external defence; but in the meanwhile the Iraqi army was to be under the direction, and in the event of joint action, under the control, of the British High Commissioner. Great Britain was also to maintain an imperial garrison or locally recruited force in

Iraq for safeguarding imperial communications and assisting Iraq. The latter was to spend 25 per cent of her annual revenue for the maintenance of the army. The Financial Agreement provided for the transfer to Iraq of roads, bridges, telegraphs, telephones, irrigation works, etc. constructed by British capital in Iraq during the war-time, at a total valuation of £ 7,000,000 ; and the port of Basrah at 72 lakhs of rupees. The net result was duality of government and a heavy drain on Iraqi finance.

Naturally the Constituent Assembly opposed the Treaty and these subsidiary Agreements. Britain threatened the Assembly by an ultimatum that if the Treaty was not ratified by June, 10, 1924, she would revive the Mandate in its original form. A notice was actually given to the League Council to that effect on May 21, 1924. On the 10th June, the Assembly not deciding anything, "the Deputies" as Main points out, "who had gone home, were brought back (some by force), and compelled, though it was the early hours of the 11th, to accept the Treaty and its subsidiary Agreements"<sup>1</sup> Out of the 100 members of the Assembly, only 69 were present, and 37 out of these 69 voted in favour of the Treaty. 24 members opposed it while 8 refrained from voting "through fear of assassination".<sup>2</sup> The resolution of acceptance was, however, conditional. It ran thus :—"This Assembly considers that many of the Articles of the Treaty and Agreements are so severe that Iraq would be unable to discharge the responsibilities of the alliance desired by the people of Iraq. But it relies upon and trusts the honour of the British Government.....that (they), after the passing of the Treaty, will endeavour to adjust the Financial Agreement, in the generous spirit characteristic of the noble British people. In view of this, the Assembly recommends that

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1. *Op. cit.*, p. 85.

2. Foster—*Op. cit.*, p. 123.

His Majesty the King should ratify the Treaty, Protocol and Agreements *provided* that immediately after such ratification His Majesty shall enter into negotiations with the British Government for securing the amendments suggested by the Committee of the Assembly. This Treaty shall be null and void *if* the British Government fail to safeguard the right of Iraq in the Mosul Vilayet in its entirety".<sup>1</sup> On that same date the Constituent Assembly passed the Organic Law unanimously without any important amendments, and on August 2, 1924 it also passed the Electoral Law. But the new Constitution was promulgated on March 21, 1925, only after the oil concession was granted to Great Britain. The Deputies were elected within three months, and the Senators were appointed by the King in July. The Iraqi Parliament met on July 16, 1925. The Constitution was slightly amended on July 29, 1925. But here, we will follow up the politico-constitutional history of Iraq up to 1932, when the final Anglo-Iraqi Treaty was signed. After that the details of the Constitution will be discussed.<sup>2</sup>

On August 4, 1924, the Ministry of Jafar Pasha was succeeded by that of Yasin al-Hashimi. On September 27, 1924, the League Council approved the Anglo-Iraqi Treaty. It agreed that Ottoman Capitulations should not exist in Iraq, and appointed a special Commission to enquire into the Mosul issue, on a petition by the British Government under Article 1 of the Covenant of the League. Though Kemal Pasha and Ismet Inonu had strongly opposed this conduct of the League, yet the Commission set out on its task, found that the Kurds were neither Arabs nor Turks, nor Persians, but imbued with a strong Kurdish national consciousness. Yet it recommended the inclusion of Mosul within Iraq on economic and tactical considerations. The League Council,

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1. For the text of this resolution, see Ireland—pp. 403-404.

2. For the text of the Constitution, see *L. N. Documents*, C. 49, 1929, VI.

following this recommendation, gave its decision in favour of Iraq, though Turkey challenged the legality of the conduct of the League.<sup>1</sup> The League allowed Mosul to Iraq on condition that the Kurdish autonomy would be preserved, and Great Britain would prolong the Mandate over Iraq for a period of 25 years through a treaty, unless Iraq was admitted sooner to League membership. As Turkey was trying to undo the work of the League, the Iraqi Parliament agreed to conclude such a treaty with Great Britain which was signed on January 13, 1926. By it the Mandate was prolonged to 25 years "from the 16th. day of December, 1925", but by another clause, it was provided that at intervals of four years, Britain was to consider Iraq's ability to become an independent State. Such an inquiry was to be made for the first time in August 1928.<sup>2</sup>

But no sooner had the Treaty between Turkey, Iraq and Great Britain (known as the Angora Treaty) was signed on June 5, 1926, thus permanently defining the frontiers of Iraq, than the latter began to agitate for the termination of the British Mandate, as its *raison d'être* was no longer there.

The people also began to protest against the double set of officials, English and Iraqi, in each department. On November 21, 1926, the Mushim ministry was succeeded by that of Jafar Pasha. Considerable improvements were made in irrigation, agriculture, public health and justice. The Ministry of Foreign Affairs was now established for the first time, and Iraq sent her representatives to London, Angora, Cairo and Tcheran. The question of introducing universal military service engaged the attention of its leaders. Great Britain was also satisfied with the administration of the country and presented a

1. Hans Kohn—*Nationalism and Internationalism* in the *Hither East*, pp. 225-230.

2. For the text of this Treaty, see *Cmd. 2362* of 1926.

favourable report to the League. The British High Commissioner, Sir Henry Dobbs, advocated for the early admission of Iraq into the League, and Great Britain agreed to revise the Treaty of 1922. King Feisal and his ministers began negotiations in London, and on December 14, 1927, a new treaty was signed in London, but it conceded very little to Iraq. The first Article declared Iraq to be "an independent sovereign state", while Article 8 said that British Government would support the candidature of Iraq for admission to the League in 1932 "provided the present rate of progress in Iraq is maintained and all goes well in the interval." The preamble to the Treaty recognised the need for the revision of the Military and Financial Agreements as they were considered to be "no longer appropriate in view of the altered circumstances and of the progress made by the Kingdom of Iraq". In fact, the Treaty was signed on the understanding that it would not be ratified if these Agreements were not revised.<sup>2</sup>

The Treaty was met with organised opposition from the Nationalist Party. Yassin Pasha and Rashid Ali resigned from the Jafari Ministry which also fell on January 7, 1928. On January 14, Abdul Mushin formed his third Ministry, composed entirely of the members of the Progressive Party. On January 19, Parliament was dissolved. Fresh elections were held and the second Parliament met on May 19, 1928. The negotiations for the revision of the subsidiary Agreements completely failed, and again political unrest spread everywhere. The British report for 1928 contained the following important lines: "The idea is growing that the Treaty of Alliance concluded with Great Britain in 1922 set up a state of affairs which, if continued, will not only impede the realisation of the country's political aspirations, but will also prove inimical to the economic and social development of the country. The Iraqi critics argue that

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2. For the text of the Treaty, see *Umd.* 2098 of 1927.

the government of a country by two governments—one foreign and the other nationalist, is an abnormality which, although possibly feasible in theory, is not in practice a workable scheme”.<sup>1</sup>

On May 15, 1928, Sir Gilbert Clayton, the successor of Sir. H. Dobbs, declared that he hoped to see Iraq a member of the League before the end of his period in 1932 ; but he died within a year of his office. On February 16, 1929, Great Britain gave a notice to the League in which it pointed out the anomaly and injustice of the prevailing Judicial Agreement by which Iraq could not give the same privileges to the nationals of Persia, Turkey, etc., as were being enjoyed by the Europeans in Iraq. On April 28, 1929, the Mushin ministry resigned and Tewfik as-Suwaidi formed a new Government. In Great Britain also the Labour Party came to power, and the Labour Government declared that it would unconditionally support Iraq's application for League membership in 1932. In September, therefore, the British Government informed the League accordingly and sent the following on September 14, 1922, to King Feisal through the High Commissioner : (a) That the British Government were prepared to support Iraq's candidature for admission to the League of Nations in 1932. (b) That the British Government would at the next session of the League of Nations inform the Council that they had decided not to proceed with the Treaty of 1927. (c) That the British Government would also at the same time inform the Council of the League of Nations that they proposed in 1932 to recommend Iraq to the League of Nations”.<sup>2</sup> On September 19, Abdul Mushin Beg accepted the King's invitation to form a nationalist ministry, but on November 13, 1929, he

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1. Report of Council of the League of Nations on the *Administration of Iraq*, 1928, Colonial No. 44, p. 27.

2. *Report of Iraqi Administration*, 1929 p. 14.



committed suicide, as a result of conflict of loyalties". The Iraqi people demanded complete independence, which the British Government refused to concede before the League terminated the Mandate. The great statesman could not bear any further such an awkward situation.

Naji-as-Suwaidi formed a new Ministry on November 18, while in January 1930, the High Commissioner, Sir Francis Humphreys issued a second letter to the British Advisers, in which he gave them directions for effecting a more rapid and complete devolution of authority to Iraqi officials.<sup>1</sup> The Suwaidi Ministry was replaced by that of Nuri Pasha on March 13, 1930, and on June 30 1930, the Anglo-Iraqi Treaty formed on the model of the Anglo-Egyptian Draft Treaty of 1930, was signed. It was ratified on January 16 1931, by the Chamber of Deputies elected especially for this purpose, by 69 to 12 votes, and by the Senate by 12 to 5 votes. The Iraqi press-Al-Alam at Arabi, Al-Biladt, As-Sant at Iraq, etc., opposed the Treaty, as putting fetters on the free movement of Iraq for a quarter of a century longer. "The preamble declared it as concluded on terms of complete freedom, equality and independence." Article 1 established a perpetual peace and friendship between the two governments, a close alliance and a full and frank consultation between them in all matters of foreign policy which may affect their common interests." The parties undertook not to adopt any foreign policy which might be inconsistent with the alliance or might create difficulties for the other party." By Article 2 there would be ambassadors representing them in their Royal Courts. By Article 3 the Contracting Parties agreed to settle their disputes in accordance with the provisions of the League Covenant. By Article 4, they also undertook to aid each other as allies should any one of them become "engaged in war", or in the event of "an imminent menace of war."

1. For the text of the letter, see Main, *Op. cit.*, pp. 95-97

The King of Iraq was to help Great Britain by way of furnishing "on Iraq territory all facilities and assistance in his power including the use of railways, rivers, ports, aerodromes and means of communication." By Art. 5, without prejudice to the sovereign rights of Iraq, the Treaty authorised the British Government to maintain air bases in the vicinity of Basra and the west of Euphrates, as well as to maintain British forces in those localities (at Hinadi and Mosul for five years), in accordance with the terms of the Annexure to the Treaty. Iraq also undertook to appoint British military instructors, if foreign instruction was thought to be at all necessary, to equip the army with the same type of armaments as those of the British forces and to offer the traditional immunities and privileges to the British army in Iraq. By Art. 7, all previous treaties were cancelled. Arts. 9 and 10 provided that the relations of the contracting parties should always be subject to the League Covenant. By Article 11, the Treaty was to come into force on Iraq's admission into the League and to remain in force for 25 years from that date, after which the Parties will "at the request of either of them, conclude a new Treaty which shall provide for the continued maintenance and protection in all circumstances of the essential communications of His Britannic Majesty".<sup>1</sup> The Treaty also covered four notes, the first of which gave precedence to the British ambassador over those of other countries in the Court of Iraq; the second note provided for a separate Financial Agreement. The third one required that British Officials should be appointed if and when the services of foreign officials would be required. The fourth one, the new Judicial Agreement replaced that of March 25, 1924, and made provisions for the setting up of a uniform system of justice "applicable to all Iraqis and foreigners alike" (Art. 2). To facilitate the working of the

1. For the text *Treaty-see cmd. 3627 of 1930.*

new system some, it was provided that some British judicial experts (nine for 10 years), selected by "the King of Iraq with the concurrence of His Britannic Majesty" were to serve in Iraq in the Ministry of justice, invested with all judicial powers under the laws of the country, in the following capacities. Judicial Adviser, President of the Court of Appeal and Cassation and Presidents of the Courts of First Instance at Baghdad, Basra and Mosul".<sup>1</sup>

The Treaty as well as the actual conditions in Iraq were discussed by Mandates Commission of the League in June 1931, which insisted that a League representative should be placed in Iraq to supervise the guarantees provided by Iraq for the minorities, viz, Kurds, Assyrians, Christians, Jews, etc. But as the British Government undertook moral responsibility "should Iraq prove herself unworthy" of independence, the Mandates Commission, withdrew its former condition, and agreed that Iraq should be emancipated, *provided* the new state would give guarantee to the League as to the protection of the minorities, the privileges and immunities of foreigners, freedom of conscience and worship and faithful observance of the financial obligations of the former mandatory power and the international conventions. On May 19, 1932 the League Council approved of recommendations of the Mandates Commission, and declared that though some provisions of the Treaty were unusual, yet "the obligations entered into by Iraq towards Great Britain did not explicitly infringe the independence of the new State". Lastly, it added that on the admission of Iraq into the League membership, the mandate would terminate. Iraq accepted the guarantees as contained in the declaration drawn up by a special Committee of the League. On October 3, 1932, the Mandate terminated, and Iraq became a fullfledged Sovereign State.

1. Foster—*Op. cit.*, p. 291.

## Constitution of Iraq.

The Constitution of Iraq was drawn up subject to the terms of the mandate and the Treaty of 1922.<sup>1</sup> The constitution contains 123 Articles divided into ten parts. Arts. 1-4 are introductory, describing Iraq as a Sovereign State, having a constitutional, hereditary monarchy and a representative government. Baghdad is the Capital. The first part of the constitution (Arts. 5-18), describes the rights of the people. Equality before law (Art. 6), security of personal liberty and rule of law, (Art. 7), inviolability of domicile, security of private property and guarantee against forced loans or confiscation of movable or immovable property or illegal and discriminatory taxation (Arts. 8-11); freedom of expression of opinion, of publication, association, conscience and security of postal correspondence—are all specifically mentioned in the constitution. Arabic is the official language. Though Islam is the official religion (Art. 13), yet, freedom to practise the various forms of worship “in conformity with accepted customs” is guaranteed to all inhabitants of the country, *provided* that such forms do not conflict with the maintenance of order and discipline or public morality”. The various communities have right to establish their educational institutions, but instructions have to be “carried out conformity with such general programmes as may be prescribed by law” (Art. 16). Government appointments are open to all Iraqis, “without discrimination, in accordance with capacity and fitness.” Subject to foreign treaties and agreements, none but Iraqis can be employed in Government appointments (Art. 18). By the National Defence Act, passed by the Iraqi Parliament in 1934, and promulgated on June 17, 1935, all male Iraqis between 19 and 21 years shall have to serve for two years with the colours, 4 years in the first reserve and further 4 years in the second reserve. Exemption

1. The text here used is the *Iraq Directory*, 1936, pp. 97-113.

may be bought on payment of £ D. 50. Students in secondary, technical and religious schools are allowed exemption. In actual practice, Iraq is a state not with any sympathy for ancient Mesopotamian traditions or western classical thought, but as Richard Coke pointed out, she is "an Arab Muslim state with strong Islamic ideals and an Oriental background".<sup>1</sup> Her traditions are derived not from the Babylon of the Book of Daniel, but from the Baghdad of the Abbassids. Three years later, another writer, Michael P. A. Langby said the same thing: "Iraq with her holy cities of Kerbela and Najaf, is loosing her Moslem character infinitely more slowly than Turkey or Iran."<sup>2</sup>

### Prerogatives of the Crown.

Part II (Arts. 19-26) describes the prerogatives of the Crown. Art. 19 says: "the sovereignty of the constitutional kingdom of Iraq resides in the people. It is a trust confided by them to the King Feisal, son of Hussain and to his heirs after him"—a provision which is reminiscent of the Persian Constitution. The law of succession regulates the details of succession. The King on accession, is bound to take an oath of loyalty to the constitution, before a joint meeting of the two Houses of Legislature. The heir-apparent of the King is his eldest son. The King attains majority on completion of his 18th year. During his minority a Regent is to be appointed, either by the former King or failing that, by the Parliament; but always with the latter's approval. The Regent is to take a similar oath, but during regency, the constitutional provisions relating to the King's prerogatives or succession to the throne cannot be amended. Between the death of a King and the appointment of the Regent, the Council of Ministers shall exercise the prerogatives of the Crown. The Regent must be of Iraqi nationality, of at least

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1. *Contemporary review*, May 1933, p. 584.

2. *Op. cit.*, January, 1936, p. 57.

30 years of age (in case of a male relative of the King, 18 years will be sufficient). No Minister can act as Regent. The King may absent himself from Iraq in case of need "subject to the passing and publication of a resolution of the Council of Ministers to that effect" and the appointment of a Regent or a council of Regency. The King cannot ascend a throne outside of Iraq without the consent of Parliament. He is the supreme head of the state. His body is inviolable, and he is "not responsible" (Art. 25). He confirms laws and orders their promulgations. He opens, adjourns prorogues or dissolves Parliament. He issues orders for the holding of general elections and convocation of Parliament. In times of urgent necessity, he has the right of issuing ordinances not contrary to the Constitution, with the concurrence of the Council of Ministers, all of whom must sign it. But "such ordinances must all be laid before Parliament or the Constituent Assembly". If Parliament disapproves of these ordinances, the Government must declare them inoperative (Art. 26). The King is the Commander-in-Chief of all the armed forces. He declares war, makes treaties, (but he cannot ratify them, until Parliament has approved them); appoints the Prime Minister, the members of the Senate; he accepts their resignations; he coins money, grants reprieve; he appoints the other Ministers on the recommendation of the Prime Minister. The judges, ambassadors and civil officials are also appointed and military ranks are bestowed by him, on the recommendations of the responsible Ministers.

In theory, therefore, the King is as constitutional a monarch as His Britannic Majesty. But in actual practice, both King Feisal and King Ghazi (1933-1937) actively participated in the affairs of the State. As Ireland points out: "acting on the advice of the British authorities, including that given by the Secretary of State for the Colonies, King

Feisal not only resumed his place as the actual executive of the State, but even *exceeded* the powers explicitly assigned him by the Constitution". The British Government, in order to carry out its obligations under the Mandate and the Treaty of 1922, compelled the king to fall in line with their directions, thus inducing him to exercise his prerogatives, and sometimes even to go beyond them, for restraining the radical nationalism<sup>1</sup> of the popular ministers. Thus in 1930, Naji Pasha as-Suwaiti was compelled by the king to resign as the British High Commissioner did not like his "Complete independence" ideals. In fact, all the sixteen ministries in his reign (1921-1933) had to go out, not on a vote of no-confidence of the Chamber, but rather contrary to provisions of Art. 66 of the Constitution, because they lost the King's confidence.<sup>1</sup> In each ministry, the Prime Minister was appointed by the king in consultation with the High Commissioner. Both the latter again interfered with the Prime Minister's choice of his colleagues. The King also interfered with all the three Parliamentary elections, though sometimes, his intervention worked for the good of the country, as in the election of 1927, he opposed the practice of sending confidential letters to the Mutaserrifs, a practice desired by the High Commissioner with a view to ensure the return of pro-treaty deputies. In the conduct of the general administration, he also played the role of a benevolent despot, uniting the various opposing sects, initiating various development projects, and so on.<sup>2</sup> King Ghazi also tried to control the government by procuring the resignation of Gailani ministry, and appointing Jamil Beg Midfai to form a new one (November 9, 1933). Again, on April 9, 1935 when the difference between the ministry of General Yasin Pasha at Hashimi and the newly elected Parliament took a serious form, King Ghazi dissolved the Parliament

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1. Ireland—*Op. cit.*, p. 422.

2. Main—*Op. cit.*, pp. 166-167.

by an Iradah and ordered the holding of a general election.<sup>1</sup> But, on the whole, ministerial crises of this reign are due more to lack of confidence of the Chamber, weakness of Prime Ministers or to unforeseen military *coup d'etat*, as of October, 1936, than to the King's actual intervention.

### The Cabinet

The King's Government is being carried on by a Council of Ministers, which shall contain not more than nine or less than six Ministers. There are at present the following departments :—Foreign Affairs, Interior, Finance, Justice, Defence, Economics and Communications, Education and Wakf. Each is in charge of a Minister. No one can be a Minister who does not possess the qualifications mentioned in Art. 30, necessary for being a member of the Senate or the Chamber of Deputies. A Minister who is not a member of either House, must find out a seat in either House within 6 months from the date of appointment or resign. A Minister cannot buy or take lease any State property (Art. 64). Arts. 65-66 prescribe joint and several responsibility of the Ministers as in other parliamentary governments. It is definitely stated that "should the Chamber of Deputies pass a vote of no-confidence in the Cabinet by a majority of members present the Cabinet must resign. If the resolution in question relates to one Ministry only, such Minister must resign". But if the Prime Minister or the Minister concerned requests the postponement of such a vote of no-confidence, the Chamber of Deputies is bound to postpone it, but only once and for a period not exceeding eight days, during which the Chamber should not be dissolved (Art. 66).

In practice, however, ministerial instability has become a characteristic feature of Iraqi politics. During 12 years of Feisal's reign there were 16 Cabinets, while during 4

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1. *Times*, April 10, 1935.



years of Ghazi's reign there were nine Cabinets. The life of a Cabinet is less than 9 months. One reason for this instability was the King's and the High Commissioner's intervention in Cabinet affairs. This was inevitable, as the King was responsible to the High Commissioner; while, British and Iraqi interests were mutually opposed. A second cause of this instability was that most of the Iraqi Ministers were not self-less patriots; they had often an axe to grind. Whenever a new Cabinet is formed, the relatives and friends of the new Ministers are appointed in important and lucrative posts of the State, with resultant inefficiency, bribery and corruption. The new Ministers also try to crush their rivals by suppressing their associations and even the press. A third cause of this instability is the absence of well-organised parties with clear-cut programmes. Every new Cabinet contains several, often 6 or 7, Ministers from the outgoing Cabinet. The result is that there is no coherence of policy or programme in any Iraqi Cabinet. The last cause of ministerial instability is the gradual growth of a violent spirit in the various party organisations, including tribal associations and the army, in the country. Thus in an article in *Asia*, June 1939, Dr. Ireland wrote as follows:—

“What distinguishes the recent period is the observable trend from reliance in democratic forms of a constitutional parliamentary government, which friends of Iraq had hoped had taken root in the country, towards the use of violence or threats of violence by the army to bring about political changes. Changes based on military intervention have occurred with increasing rapidity. First came the *coup d'état* of October, 1936, headed by General Bakr Sidiqi and accompanied by the bombardment of Baghdad; then his assassination by a soldier on August 16, 1937, when Jamil al-Midfai came into office (after the resignation of Seyed Hikamat Suleiman Ministry, which was supported by General Sidiqi). He in his turn gave way to a bloodless *coup*

*d'état* carried through by army officers on December 24-25, 1938, when Nari as-Said became Prime Minister with the avowed intention of returning to the programme of King Feisal. Nari himself was obliged to repress an attempted *coup d'état* on March 21, of this year (i.e. 1939)".<sup>1</sup>

### The Legislature

The third part of the Constitution (Arts. 27-63) describes the composition and powers of the Iraqi Legislature. There are two Houses, the Senate and the Chamber of Deputies. Legislative power is vested in the King in Parliament. A Senator must be an Iraqi national, 40 years old, and a Deputy, 30 years old. None of them should be bankrupts, convicts, or foreign nationals, or lunatics or idiots or related to the King within the prohibited degrees. Persons having material interests in a contract with a Public Department of Iraq are also excluded (Art. 30). The Senate is composed of not more than 20 members, appointed by the King "from among persons whose conduct has secured the confidence and esteem of the public and those who have served the State and nation with distinction in the past" (Art. 31). Senators are appointed for eight years, half of them retiring every four years. The first change took place in 1929, when the retiring half was selected by lot. The retiring Senators are eligible for re-appointment. The President and the Vice-President of the Senate are selected by the members from among themselves for one year, subject to confirmation by the King. They are also eligible for re-election. The Senate assembles and dissolves at the same time as the Chamber. The Senators are paid like the Deputies. The Senate is largely composed of the King's party. It includes both Jewish and Christian members. In practice, however, the Senate is less powerful

1. *Asia*, June, 1939, p. 332.

than the Chamber. It cannot initiate legislation "though it sought to obtain this right in 1926."<sup>1</sup>

The Chamber of Deputies is an elected assembly. One Deputy is elected for every 20,000 males. There are at present 115 Deputies.<sup>2</sup> The method of election is based on secret ballot and reservation of seats for Non-Islamic minorities (Arts. 36-37). The Chamber is elected for four years and sits on the first day of November following the elections. It is convoked by the King. Art. 39 says:—"Should the Chamber not be so convoked on that day it shall meet of its own accord". The session lasts for four months and if extended by the King for urgent business should not exceed a total period of six months. Actually, however, the King always prolongs the sessions for shortage of time to discuss numerous bills. The King may order adjournment but it shall not be more than three times in any session and the total period of such adjournment shall not exceed two months. When the Chamber is dissolved, fresh elections must be ordered, and the new Chamber convoked in extraordinary session within a period not exceeding four months from the date of dissolution. But, in any case, a session may begin on that date (Art. 40). A Deputy can represent only one constituency; he must give up Government appointments on being elected; he is eligible for re-election. The Chamber decides all election disputes, frames rules for its internal regulation, elects a President, two Vice-Presidents and two Secretaries, for one year, from among its members (Arts. 43-44). A majority of the members constitutes a quorum in each House (Art. 52). Supported by ten members, any Deputy can propose the enactment of a draft law "except in what concerns the financial matters". If the proposal is accepted by the House, it will be sent to the Council of Ministers who shall prepare

1. Foster,—*Op. cit.*, p. 189.

2. *Political Hand-book of the World*, 1939, p. 103.

the necessary draft law ; but if the proposal is rejected by the House, it may not be re-introduced during the same session. The Deputies and the Senators take oath of loyalty to the King and the Constitution. Decision by majority is valid only when "half of the members present cast their votes" (Art. 53). Every member can put questions to the Ministers, but no discussion can be held over them, except in urgent cases, or by consent of the Minister concerned, until eight clear days have elapsed. Articles 56-61 mention the usual functions and privileges of the Legislature and its members, including immunity from arrest for parliamentary speeches or during the parliamentary session, etc. A Minister has the right to vote in the House of which he is a member, and to speak in both Houses. No bill can become a law unless it is passed by both the Houses and confirmed by the King. The King may return a bill passed by both the Houses but he must do so within three months, and if one of the Houses declares it to be an urgent bill, within fifteen days, from the date of its presentation, "together with a statement of the reasons for so doing" (Art. 62). If one of the two Houses reject a bill twice and the other pass it, a joint meeting of the two Houses shall decide its fate, the bill being considered to be passed if it is accepted with or without amendments by a majority of two-thirds of the members of the joint assembly, and if it is then confirmed by the King. If it is not passed in this way, it may not be re-introduced in the Legislature during the current session. But the Constitution does not definitely say what will happen if the King refuses to confirm a bill passed several times by the joint assembly. Perhaps the Legislature will pass a vote of no-confidence against the Ministry, and the King without a Ministry will be unable to carry on the Government. It seems, therefore, that the Iraqi Legislature is quite powerful in theory at least. In actual practice, however, the election to the Chamber has always been controlled either by the

King or by the Cabinet through various means such as grant of Government coupons, exercise of influence by the Mutesserifs, bribery, appeal to tribal passions, etc.<sup>1</sup> The existence of the dictatorial regimes in Turkey and Persia has also greatly diminished the prestige and power of the Iraqi Chamber as a democratic Assembly. The little influence that it could actually exert was also destroyed by the unseemly quarrels amongst the various party-leaders who very often sought for their personal aggrandisement. In composition and spirit, the Chamber is far from being truly national. The landowning classes and the tribal Sheikhs are predominant in Parliament and have often succeeded in passing such financial measures which promote their interests to the detriment of the interests of the country. But inspite of all these defects the Chamber has been the rallying ground of Iraqi public opinion and the training field for true democracy. It has ventilated many national grievances and has tried to check ministerial irresponsibility, though few Cabinets were and are still now based on the confidence of the People's Chamber.

The sixth part of the Constitution deals with financial matters. Under Art. 91, no tax can be imposed except in accordance with a law. Disposal of State property, grant of monopolies, concessions, exemption from taxation, contracting of loans by the Government, etc., must be in accordance with and subject to a duly passed law. Various rules are also provided for the provisional Budget estimates, the payment of salaries, the receipt of revenues, auditing of the accounts, etc. Demand for grant can be made only by a Minister (Art. 105). Expenditures arising out of Treaties approved by Parliament, or by the Constituent Assembly, cannot be reduced by the Chamber, unless such an amendment is approved by the King (Art. 106). The Budget

1. *Contemporary Review*—Jan. 1936, p. 53.

estimates must, in the first place, be submitted to the Chamber. But, if Parliament is not sitting, the Budget of the preceding year shall be followed. Any urgent expenditure can be met by issuing ordinances under Article 26.

The seventh part of the Constitution deals with the administration of the provinces. The country has been divided into the following 14 districts or Liwas :—Mosul, Arbil, Kirkuk, Sulaimani, Diyala, Baghdad, Dulaim, Kut, Hillah, Diwaniyah, Muntafiq, Amrah, and Basrah. Each Liwa is administered by a Mutasserif, and is sub-divided into Kazas under Kaimakans. The Kazas are again divided into Nahiyes under Mudirs. Article 111 of the Constitution lays that these districts should have Administrative Councils and Municipalities, municipal councils. Each religious community has got the right of establishing a Religious Council with power to administer and supervise the properties under Wakf and of orphans. But these Councils, as Article 112 says, "shall be under the supervision of the Government." The provincial administration is highly centralised ; the Mutesserifs follow the orders of the Ministry of the Interior, the Qaimaqans those of the Mutesserifs, and the Mudirs those of the Qaimaqans. The Municipalities are also under the general supervision of the Ministry of the Interior. Not only each Mayor is appointed by the Central Government, but the municipal budgets are required to follow the general lines laid down by the Ministry of the Interior. The police force, consisting of 5670 foot and 4000 mounted (camel and horse) and some local levies, are also controlled by the Ministry of the Interior. There is also a Criminal Investigation Department (C. I. D.) doing useful service in a country where murders are so common. The Ministry of the Interior also controls the Department of Health, administers the Press Law, manages the Press Bureau by issuing statements and news to the press. It also

applies the "Law of Association" which was "designed to control the activities of organisations which might become secret or subversive".

The Judiciary has been dealt with in the fifth part (Arts. 68-89). Judges are appointed by Royal Irada. The Courts are of three classes :—(1) Civil Courts, (2) Religious Courts, (3) Special Courts. All of them are free from official interference in the conduct of their affairs (Art. 71) and generally hold open sittings. The conditions governing the appointments, promotions and discipline of Judges and Kazis are set out in "The Judges and Kazis Law", No. 31 of 1929. Under this law, a Committee of Justice has been established in the Ministry of Justice under the chairmanship of the President of the Court of Cassation, invested with all these powers. Under the Anglo-Iraqi Judicial Agreement of 1931, a uniform system of justice applicable to all Iraqis and foreigners alike has been established. Nine British experts, selected "by the King of Iraq with the concurrence of His Britannic Majesty" have been appointed for ten years in the posts of the Judicial Adviser, President of the Court of Appeal and Cassation, and Presidents of the Courts of First Instance at Baghdad, Basrah and Mosul. The British Judicial Adviser is empowered to express opinion on draft laws prepared by the Ministry of Justice. He can also propose measures for the proper working of the Ministry.

Judges and Kazis must be Iraqi nationals, of at least 25 years of age, possess a good knowledge of Arabic and must be of good character and reputation. Judges are to be graduates of the Iraqi Law College, or of a foreign School of Law, and must have been in the legal profession for a certain period. Kazis must be either a graduate of the Iraqi Law College or satisfy the Committee of Justice as to their fitness by examination. The Civil Courts have jurisdiction over all Iraqis as well as over Government suits, in both

civil, criminal and commercial matters. Iraqi laws are applied subject to such special international customs relating to the personal status of the foreigners, as are recognised by the Iraqi Government. Religious Courts are of two classes :— (1) Shara Courts dealing with the personal status of the Moslems and Wakfs, etc., and (2) the Spiritual Councils of the minority communities (Jews, Christians, etc.), dealing with matters of their personal status, marriage, divorce, etc. (Arts. 78-80). In the Shara Courts, the doctrine peculiar to each of the Islamic sects is applied and the Kazi belongs to the sect whose members are in a majority in the district. The present judicial structure of Iraq is as follows :—At the head of the system stands the Court of Cassation at Baghdad with a British President, an Iraqi Vice-President and six other judges, having the highest appellate jurisdiction in both civil and criminal matters. Below it there are six principal courts of First Instance, at Baghdad, Basrah, Mosul, Kirkuk, Hillah and Baqubah, each with a British President, an Iraqi Vice-President and three or four other judges. These courts try civil cases, but when dealing with criminal matters, they are called Sessions Courts. Below them are ten single Judge's Courts (Civil) of First Instance. Criminal matters are dealt with by the Magistrate's Courts which are found in all places where there are Civil Courts. In fact, these Magistrate's Courts are constituted of these Civil judges exercising magisterial powers of first and second class. The lowest Civil Courts are the 42 Peace Courts with very limited powers. Administrative officials are sometimes appointed as temporary magistrates in places where there are no permanent courts. They also act as Peace Judges to deal with cases of debts due from cultivators. Lastly, there are the Religious Courts dealing with Shara matters. There are two (one Shia and another Sunni) Benches of Revision in Baghdad. Below them are the Shara Courts under the Kazis in all places where there are Civil Courts. Art. 88



of the Constitution also provides for Special Courts or Committees to be set up when necessary for dealing with military and tribal cases, and such cases as may arise between the Government and its servants, and those relating to the possession or boundary of lands. Arts. 81-88 provide for the establishment of a High Court for the trial of Ministers and members of Parliament accused of political offences, and of Judges of the Court of Cassation. For any other purpose the High Court shall be convened by means of a Royal Iradah issued in pursuance of a resolution charging the person concerned, passed separately in each case by a two-thirds majority of the members present in the Chamber of Deputies. The Court must be composed of 4 Senators and 4 Senior Judges, all selected by the Senate, together with the President of the Senate, who would be the Chairman of the Court. The High Court has also power to examine matters connected with the interpretation of the Constitution, and all such laws as affect it. But, for this purpose it will be convoked by a Royal Iradah in agreement with the Council of Ministers and constituted as before. The decisions of this Court must be determined by a two-thirds majority of the judges and are not appealable. If the Court decides that any law contravenes the terms of the Constitution, it must, to that extent, be deemed to be repealed *ab initio*. There is also provision for another Court—the Dewani Khas—whose function would be to render opinions on such points of law as particular Ministers may be doubtful of, and consequently require light there upon, especially in connection with the administrative affairs (Arts. 82 and 121). Though the Iraqi Judiciary is well organised and independent, yet it is sometimes found that the judges are afraid to displease high officials. They are also sometimes swayed by religious and political motives, as in the Bahais' case in 1928.<sup>1</sup>

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1. Ireland—*Op. cit.*, p. 446.

Iraq has a democratic constitution. But its practical working has not developed along democratic lines. The country is very fertile and rich in minerals. The oil wells of Kirkuk and Khanaqui are eighth in the world. The Iraqi people, some 3,600,000 souls, inhabiting an area of 116,600 sq miles, are not strictly homogeneous. There are more than 12% non-Moslems. while the Shias and the Sunnis are in the ratio of 8 to 5. But, though party system has not developed as much as in the West, yet, as Foster points out, "fortunately party lines tend to cut athwart religious and racial lines, though there is an incoherent Kurdish race".<sup>1</sup> British influence, even after the expiry of the Mandate, is not altogether absent. As Ireland says, British "power is not exercised directly as in Mandate days, but essential benefits have been safeguarded under the Treaty of Alliance".<sup>2</sup> The country has also improved. The Kut irrigation barrage, the extension of cotton cultivation, the building of the Baji-Tel-Kotchek section of the railways connecting Europe with Basrah, etc., are some of the noteworthy achievements of the Iraqi Government. Education is also spreading very fast, and large numbers of students, including girls, are sent abroad every year. The financial condition of the country is not gloomy. The public debt of Iraq is not heavy. Though the income-tax is extremely fortuitous, and the prices of commodities are not very stable, still the revenues are not negligible. The customs which are efficiently managed, yield a revenue of over £D.2,600,000. Transit duties yield £D.3,500,000, and Excise £D.643,146. The royalties from oil yield on an average £D.5,00,000 a year (the Dinar note is convertible into one pound sterling). In foreign affairs the Iraqi Government has scored success. It has been a party to the Middle East

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1. *Op. cit.*, p. 270.

2. *Asia* June 1939, p. 333.

Pact (Saadabad Pact); it has finally settled its boundary disputes with Iran; it has improved its relations with Turkey; and has made agreements with Saudi Arabia, Yemen and Trans-Jordan. The only trouble at present lies in its internal administration. The young King Ghazi was killed in a motor accident on April 4, 1937. His three-year old son was soon proclaimed King Feisal II, under the regency of his maternal uncle, Emir Abdul Ilah. Apart from such chronic political defects as ministerial instability, party conflicts, tribal unrest, minority questions, frequent transfer of officials, low salaries of the judges, and the "spoils system", the Constitution has been recently faced with a new danger, viz., military *coup d'etat*s with occasional threats to monarchy. Ireland says that it is difficult to prophesy "whether the monarchy will survive the fourteen years of regency. It is common knowledge that the dynasty has been on insecure foundations for the past three years, the necessity for a change having been openly discussed in Iraq."<sup>1</sup> The conflicts between the Shias and the Sunnis, the Kurds and the Iraqis, are also not easily soluble. On April 3, 1941, there was another military *coup d'etat* in Iraq. Rashid Ali Gailani, the leader of the Nationalist Party, and twice Prime Minister of Iraq (once from March 20, 1933 to Sept. 9, 1933, when he resigned due to the death of King Feisal on Sept. 8, 1933; and then from Sept. 9, 1933, with the accession of King Ghazi, to November 9, 1933, when the new King refused to have him as his Prime Minister) again captured power and became Prime Minister on the 8th of April, 1941, with the help of the Iraqi army. The Regent, Emir Abdul Ilah, fled from the country, exhorting the people not to give support to Rashid Ali. The new Cabinet was not anti-monarchical; it was constituted of many military officers.

1. *Op. cit.*, p. 333.

It had also announced its decision not to repudiate the Anglo-Iraqi Treaty of 1930. But Great Britain refused to recognise the new Government as she believed the action of Rashid Ali to be unconstitutional. On the 11th. April, the Iraqi Parliament approved the dismissal of the Regent Abdul Ilah and nominated Sherif Sharraf, a senior member of the Hashimite family, as the new Regent during the minority of King Feisal II. But within a month Rashid Ali was found invoking the help of Nazi Germany against British forces in Iraq who were stationed there in accordance with the terms of the Anglo-Iraqi Treaty of 1930. Great Britain was compelled to take direct action against Rashid Ali. After several skirmishes the British forces defeated Rashid's army and air force, and compelled him to leave the country. The old Regent was called back, and the same constitutional regime, as existed before Rashid's coup, was reinstated.

## CHAPTER VII

### SAUDI ARABIA

A brilliant writer has aptly expressed the spirit of political Arabia thus : "The world of Arabia is neither home nor object of study for the decadent agnostic or the philosophical pacifist : nor is it likely even so to be."<sup>1</sup> Indeed, here in this desert land, war and peace, love and hatred, the rattle of the sword and the chanting of the Koran rise and fall with the rhythm of the unruly waves that surround its shores. Birth and heraldry struggle with democracy ; and to be a successful sovereign in Arabia one must be "as much loved as feared of his people." Various families tracing their descent from the famous Caliphs of old, have tried their luck through bloody duels ; but few have come out so successful and so triumphant as the Saudi. The connection of this family with Wahhabi religion dates back to "the middle of the eighteenth century when Mohammed ibn Abdul Wahab, religious teacher and persecuted founder of the Wahhabi sect, sought refuge at the Court of the Amir Mohammed Ibn Saud, a petty desert chieftain of North Central Arabia".<sup>2</sup> Saud placed his entire fortune at the feet of the reformer, and tried heart and soul to spread his views. Wahhabi religion is a going back to the Koran, to its fundamental teachings, to the absolute, pure monotheism as preached by the Prophet. It imposes daily prayers compulsorily ; but sternly suppresses all worshipping of the

1. Kenneth Williams—*Ibn Saud* (1933), p. 9.

2. Grayson L. Kirk, *Ibn Saud builds up an Empire*—in *Current History*, December, 1934, p. 292.

saints at their tombs, or use of any charm or talisman. It rigidly condemns all luxury, including use of ornaments, games of chance, smoking of tobacco, drinking of wine, gambling, etc. The sacred Shara laws—an eye for an eye and a tooth for a tooth—have received its unreserved endorsement; and so, there in Saudi Arabia, the thief loses his hand, and the adulterer is condemned to death.

The Wahhabi religion spread gradually in Central Arabia. But this chagrined the Sublime Porte, and the Sultan employed his Viceroy, Mahomed Ali of Egypt, to straighten out the crooked Abdullah, the grandson of Amir Mohammed Ibn Saud, the defender of Wahhabism. With the defeat and subsequent execution of Abdullah, Wahhabism disappeared for eighty years. The house of the Sauds sank into political insignificance while the Rashids of the Shammars professing traditional religion grew fat under Turkish shelter.

In 1880 Abdul Aziz Ibn Abdur Rahman Ibn Feisal es Saud was born when his father was wearing out his days as an exile in the Court of Sheikh Mubarak of Kuviet. With his growing years, the young sapling began to dream of the mighty oak that the Saud family once was. He collected a band of fanatical Wahhabis and won them over for his purpose by his gold, and more by the touch of his magnetic personality. In 1901, by a *coup d'état*, he captured the town of Riyadh. In 1904, he hurled back the Shammar forces twice, and recovered the province of Qasim. The Battle of Bukairiya taught the Turks what a power Ibn Saud was. The Rashids again tried their strength in 1906, and though the elder Rashid was killed, the younger held his own for 14 long years, after which he also collapsed in 1920. In the second decade of the twentieth century, Ibn Saud began to lay the foundation of his political super-structure deep into the heart of the desert Bedouins. He decided that the Bedouin must give up his nomad life of loot, murder and

constant migration. To achieve his end, he raised two slogans : Back to the Koran, and to the Land. By religious revival, Ibn Saud gave a new turn to the Arab's eternal desire for adventure and conquest ; while by establishing agricultural colonies all over central Arabia he fixed the Bedouins to the soil and thus formed "the nucleus of the standing army of the Wahhabi State."<sup>1</sup>

This movement was called the "Ikhwan," which meant "brothers." And the followers of this movement were brothers indeed, united in religious, cultural, political and economic outlook ! The Saudi State began to help these colonists with money, "free supplies of arms and ammunition, provided they undertake to fight in defence of their ruler."<sup>2</sup> The movement was started first at Artawiya in 1912, and by 1927, as Rihani points out, there were as many as 73 colonies with 100,000 souls, "involving a standing army of nearly 50,000 men-at-arms." Indeed, as Philby says, "the Ikhwan movement is a living monument of the genius of Ibn Saud."<sup>3</sup>

In 1909 there was a Home Rule movement in the Turkish Empire. The Turkish Constitution of 1878 was restored, and great decentralisation was expected in the vilayets. But with the ascendancy of the Committee of Union and Progress in Turkey, and its alliance with Germany, such hopes vanished. Rather, just before the war, Turkey again turned her attention towards Nejd and planned the construction of the Baghdad railway with its terminus in Kuviet. At this time, there were four important Arab Powers competing with each other for the hegemony over Arabia : the Hashimite Sheriff of Mecca ; the Rashids in the north with Haql as

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1. *Ency. Brit.* Vol. 2, p. 182.

2. *Current History—Op. cit.*, p. 294.

3. H. A. T. B. Philby—*Arabia*, 1930, p. 227.

their capital ; Ibn Saud in the Nejd ; and the Imam of Yemen in the South. In 1914 Ibn Saud frustrated the Turkish projects by suddenly attacking Hasa, where the Turkish garrison immediately surrendered. With the outbreak of the world war Turkey persuaded the Islamic countries to declare a *jihad* against Great Britain, but as Hogarth says : "If zealous pan-Islamic propaganda persuaded leaders of prayer in Hadramut, Oman and Nejd to acknowledge in the Khutba the spiritual primacy of the Ottoman Caliph, there was either no response or a hostile one whenever this religious courtesy was followed by a political claim."<sup>1</sup> The result was that many Arabs rose in revolt against Turkey. The pro-Turkish forces of Jebel Shammar were attacked by Ibn Saud under the inspiration of Captain Shakespear who had gone there to secure Saud's support for Great Britain, but who was unfortunately killed in the battle. In December, 1915, the British Government concluded a treaty of friendship with Ibn Saud at Uqair, by which they agreed to pay him and indeed paid for six years, a subsidy of £60,000 a year ; and Ibn Saud and his successors "were pledged not to pursue a policy prejudicial to Great Britain's interests and not to enter into relations with any other power."<sup>2</sup> This Treaty of Uqair, therefore, put Nejd in the position of a British Protectorate.

At this time a new situation was arising. The British Government opened negotiations with Sheriff Hussein of Mecca to whom they promised, in exchange of his military support, the independence of all Arabia, excepting the "districts of Mersina and Alexandretta, and portions of Syria lying to the west of the districts of Damascus, Hama and Aleppo."<sup>3</sup> The Sheriff hoped that all Arabia

1. Hogarth, D. G.—*Arabia* 1922, p. 118.

2. Hans Kohn—*Nationalism and Imperialism* etc., 1930, p. 241.

3. The letter of Sir H. Macmahon, Octo. 24. 1915, to Sheriff Hussian,—*Cmd.* 5957 of 1939.



would be unified under his crown. Hussien's son Feïsal helped the British with Arab contingents. But this roused the natural suspicion and jealousy of Ibn Saud against both the British and the Hashimite family. The dispute over the village of Khurma on the Nejd-Hejaz border in 1918 widened the gulf between the two States. King Hussein sought for British help. Lord Curzon, the great imperialist, who was at that time Foreign Secretary, at once warned Ibn Saud (March, 1919), not to incur the displeasure of His Majesty's Government, by attacking Khurma, which he authorised King Hussein to occupy. But in May, the Wahhabi army attacked and routed the force of Abdullah, son of King Hussein, at Turaba, which was immediately annexed to the Saudi State. On August 31, 1920, Ibn Saud concluded a treaty of friendship with Asir. This treaty specified the tribes and the lands belonging to each other. Both parties agreed not to interfere in each other's affairs.<sup>1</sup> In 1921 Hail surrendered, and the Rashids of Jebel Shammar weakened through internal rivalries, were wiped out. In 1922 Jauf fell and the Saudi State reached the borders of Transjordan in the north. The differences with Hejaz again cropped up. The Turkish Government's abolition of the Caliphate in 1924 encouraged King Hussein to win the title for himself. Actually he came over to Transjordan, where his son Abdullah was appointed as the Amir, and announced that he would assume the Caliphate. Already his rule had earned a bad name due to his capricious administration and heavy taxation. The Moslems of India and Egypt also did not like him. The Conference of Kuveit in 1923, under the presidency of S. G. Knox, the British Resident on the Persian Gulf, failed to compose the differences between King Hussein and Ibn Saud. In September, 1924 the

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1. For text of the Treaty, see, *Brit. & For. St. Paps.* vol. 135, pp. 377-378.

Wahhabi army attacked Hejaz. Ibn Saud roused the popular sentiment against King Hussein, by holding him guilty not only for all the corruptions at Mecca, but also for placing all Arab lands "under the influence of foreign, non-Muhamaddan Powers, as is proved by the official documents and articles in El Khibla".<sup>1</sup> Hussein sought British help, but "England deserted her former ally".<sup>2</sup> By December 1925, the holy places of Mecca, Medina and the important coastal town of Jidda surrendered. On January 8, 1926, Ibn Saud proclaimed himself as the King of Hejaz, though a few months ago he had announced that Hejaz would not be annexed to his Kingdom, but would be governed under a free constitution drawn up by the joint deliberations of the representatives of all the Moslem States of the world.

In June 1926, Ibn Saud convoked a Pan-Islamic Conference at Mecca, where "he justified his attack against King Hussein by his wish to purify the cradle of Islam from all inequities and corruption of Hashmite rule".<sup>3</sup> But he was in no mood to allow the Conference to lay down policies for him or to dictate terms to him. The Conference was a failure; it ended in misunderstanding, never to meet again. He wanted it to help him financially to complete the Mecca-Medina-Jidda railway, and politically to force Great Britain to "return to the Hejaz the district of Maan and Aqaba (which England had annexed to Trans-Jordan in 1925) and to restore the Hejaz railway which connected Medina with Damascus." But the Conference had not the strength in it to assist Ibn Saud in these projects. On August 29, 1926, he gave Hejaz a constitution, which we shall deal with afterwards.

1. Quoted by Hans Kohn—*Nationalism etc. Op. cit.*, pp. 314-315.

2. *Op. cit.*,—p. 250.

3. Hans Kohn—*The Unification of Arabia,—Foreign Affairs*, October, 1934, p. 95.

In October 21, 1926, Ibn Saud concluded another Agreement known as the Treaty of Mecca, with the Imam of Asir, by which the Imam acknowledged the suzerainty of Ibn Saud over the marches described in the Treaty of 1920, as belonging to Idrisi. The Imam also engaged to be under the control of Ibn Saud in the matter of foreign relations, war, peace, and cession of any part of his territory (Arts. 2-4). In internal administration the Imam was given freedom provided "such administration is in harmony with Sharia law and justice according to the practice of both Governments." (Art. 6). Ibn Saud agreed to give military protection to the Idrisi against all internal and external aggression and to assure the throne of Asir to him during his lifetime and "thenceforth to whomsoever the House of Idrisi and the competent authorities of the Imamate may agree upon."<sup>1</sup> (Arts. 5, 7). Asir, thus, became a protectorate of Ibn Saud.

On January 22, 1927, Ibn Saud issued the following Royal Decree constituting Nejd a kingdom and uniting it with Hejaz: "As a result of the petition made to us by those of our subjects who have power to loose and bind in the Sultanate of Nejd and its dependencies, we have ordered that the said Sultanate and its dependencies, shall become "the kingdom of Nejd and its dependencies", and that our title shall henceforward be "King of Hejaz and Nejd and its dependencies." We pray that God may grant us success and help in our endeavours to fulfil this task. He is the best of helpers"<sup>2</sup>

In 1925, while the siege of Jidda was going on and again on May 20, 1927, at Jidda, the British representative, Sir Gilbert Clayton, concluded with Ibn Saud treaties by which the Nejd-Transjordan and Nedj-Iraq frontiers were settled,

1. *Br. & For. State Papers*—1932, Vol. 135, pp. 377-378.

2. For text see *Br. & For. St. Paps.* 1929, Vol. 130, p. 789.

and the absolute independence of Saudi Arabia was recognised. By the Treaty of Jidda Ibn Saud got the right to import arms and war material freely into Arabia. He also engaged not to attack those Arab States which were under British protection. But, with regard to the British claim to Maan and Aqaba which they had annexed to Transjordan in 1925, Ibn Saud declared in a note that though he was willing to maintain the *status quo* until more favourable circumstances enabled a final settlement of the problem, he was not prepared to accept the British point of view that he should renounce his claim over those territories, once for all. In this very year, Ibn Saud's eldest son "Saud" visited Egypt, and his second son Feisal visited England, Holland and France. Russia was the first State to recognise the new Kingdom of Hejaz, and this news came "as a surprise and something even as a shock to the European and other Powers represented at Jidda."<sup>1</sup> But the other States followed, and Great Britain sent her first accredited Minister, Sir Andrew Ryan, to the State in 1930.<sup>2</sup> In 1927, there were some frontier skirmishes between the Iraqi and Saudi forces on account of a dispute over the construction of a police out-post at Busaiya by the Iraqi Government, which Ibn Saud regarded as a violation of the Treaty of Uqair of 1922. The matter, however, did not cause diplomatic break between the two States. On July 13, 1928, the King by a royal decree, amended the organisation of the Legislative Assembly of Hejaz. Other provisions of the Hejaz constitution of 1926 continued in force as before.<sup>3</sup> The entire country was enjoying peace, and reforms on modern lines were being gradually introduced. Big roads were made to facilitate

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1. Philby—*Arabia*, p. 325.

2. *The Nineteenth Century and After*, May, 1935, p. 574.

3. For the text of this Royal Decree, see *Br. & For. State Papers*, 1929, Vol. 130, pp. 790-791.

pilgrimage ; thousands of motor cars plied through the streets ; wireless stations were constructed and aeroplanes were purchased for the defence of the State. Ibn Saud made the Ulemas declare that modern machinery was not incompatible with the true teachings of Islam. But the peace of the country was suddenly broken by the revolt of an orthodox section of the Ikhan brotherhood under Feisal-ud-Dawish and Sultan Ibn Bijad, once Ibn Saud's most trusted friends and collaborators. The King tried to win them over by patience and forbearance ; but when all these means failed, he finally crushed them in a decisive military operation in the Batin Valley in 1930. In October 1930, As Sayyid Al-Hasan-al-Idrisi of Asir, in accordance with the terms of the Mecca Agreement of 1926, surrendered the administration of all affairs to King Ibn Saud. Ibn Saud accepted the surrender and agreed to manage the province in accordance with the rules of administration agreed upon by the Idrisi and Saudi representatives under the presidency of Amir Feisal, son and Viceroy of Ibn Saud in the Hejaz, on November 16, 1930.

This agreement provided that Al-Hasan-al-Idrisi "shall remain as head of the Idrisi Government, and all orders shall be issued in his name on behalf of his Majesty the King Ibn Saud in that Province" (Art. 1). King Ibn Saud was to appoint an Amir, assisted by an advisory Legislative Council "for the administration of affairs in the Idrisi Province and for the supervision of internal improvements, the security of peace and order and to give effect to the Sharia Laws" (Art. 2.) There was also to be a Director of Finance appointed by the King, responsible for the collection of taxes and disbursement of expenses. All civil and military officials were to pay due regard to the position of Al-Hasan-al-Idrisi. The latter's endorsement and approval were necessary to make the decisions of the Asir Legislative Council valid. But

in case of difference of opinion between the Council and Al-Hasan-al-Idrisi, the matter was to be determined finally by King Ibn Saud (Art. 6).

On November 20, 1930, the King approved this arrangement and passed a decree setting up a Legislative Council of Asir, composed of 5 elected members, presided over by a representative of the Amir. (Art. 4). According to Art 9. "the Legislative Council shall not occupy itself with diplomatic or foreign affairs", which, together with all matters relating to security of roads, maintenance of law and order, enforcement of "regulations in operation in the Hejaz and Nejd in respect of Bedouin affairs," and the general interests of the country, were kept reserved for the Amir. The Council was allowed to discuss and pass such measures as would improve commerce, cultivation, education, peace in the interior, and moral and material progress of the people, without prejudice to the interests of the neighbouring countries. It was also empowered to bring to the notice of His Majesty any infraction of the rules and regulations by the Amir or the Director of Finance, provided the representation was signed by Sayyid Idrisi, and the criticism was true.<sup>1</sup> Asir, thus, became a dependency of Nejd.

In the same year, Ibn Saud concluded a treaty of peace and friendship with King Feisal of Iraq and in 1935, another similar treaty with Amir Abdullah of Trans-Jordan. In October, 1932, the titular ruler, Idrisi of Asir, revolted against Ibn Saud, but the abortive rising was quickly suppressed and Asir was formally incorporated in the Saudian kingdom. On September 8, 1932, by a Royal Proclamation from Riyadh, Ibn Saud changed the name of the country into "Saudi Arabia" and commissioned his Council of Ministers

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1. For the text of this Decree, as well as the Agreements, see *Br. & For. St. Paps*, 1930, Vol. 133, pp. 628-631.

"to start immediately to lay down a basic constitution for the kingdom, a rule of succession to the throne and a regulation for the organisation of the Government." The Council of Ministers was empowered to co-opt persons of intelligence in the preparation of this constitution.<sup>1</sup> However, still now, in the absence of the unified constitution, there are two governments with two capitals, Mecca and Riyadh, under the same King, governed in his name, by his two sons as his two Viceroys.

Since the incorporation of Asir into Saudi Arabia, the neighbouring State of Yemen was feeling suspicious and nervous. The Imam Yehia of Yemen is the head of a Shia sect, the Zaidis, "a most secluded and fanatical seet, hated and considered heretics by the Snnnis." The smouldering embers of subdued hostility broke out into an open conflagration, when the Imam ordered the occupation of Nejran, a border district between Yemen and Saudi Arabia. The Imam had also given shelter to the members of the fallen Idrisi dynasty of Asir, who were therefrom intriguing against the Wahhabi King.<sup>2</sup> The lion of the desert immediately fell upon the forces of the Imam, and routing them, opened up the way to Sana, the capital of Yemen. As Philby remarked, this war with Yemen demonstrated "to a bewiidered world that the supposedly powerful state of the Yeman was but as field of ripened corn before the scythe of Wahhab's rebel horde".<sup>3</sup> The World Moslem Congress of Jerusalem sent a delegation, headed by the Muffti of Jerusalem, to bring about a peace between those two Powers. In June, 1934, the Treaty of Taif was signed. It brought not only peace, but also a consolidation greater than ever before, between these two states. The Treaty is a milestone

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1. For the text of this Deeree, see, *Brt. & For. St. Pop.* 1932, Vol. 195, pp. 571-572.

2. Kessing's Archives, 1931-34. p, 1360 F.

3. *The Nineteenth Century and After*—May, 1935, p. 576.

in the path of Arab unity. The preamble declared it to be "a treaty of Moslem and Arab brotherhood, to promote the unity of the Arab nation, to enhance the position and to maintain its dignity and independence." Both parties declared "that their nations are one and agree to consider each other's interests as their own." Hans Kohn truly says that the desire expressed in this treaty "to form a united front against any attack on the Arabian peninsula marks a distinct and what would ten years ago have seemed an almost incredible progress in Arab national consciousness"<sup>1</sup> The treaty was followed by exchange of Notes in which His Majesty Imam Yehia agreed to surrender the Idrisis to His Majesty Ibn Saud and to evacuate the Tihama mountains occupied by Yemenese troops.<sup>2</sup> The net result seems to be that King Ibn Saud transformed Yemen into a virtual protectorate, and himself became the undisputed paramount Power in the Arabian peninsula.

In August, 1934, the Japanese Government appointed Sheikh Mahomed el Sukkaf, a Manchurian Moslem as its Diplomatic Representative with the Government of Saudi Arabia. In May 1, 1936, the Saudi-Egyptian Treaty was signed. It re-established the normal diplomatic relations ruptured in 1926. King Ibn Saud agreed to treat the Egyptian pilgrims on the most favoured nation principle. Egypt, on her part, agreed to spend the revenues of the Egyptian Wakfs dedicated to charities in the Holy Cities of Mecca and Medina, on rest houses and fountains, without in any way infringing the sovereignty of Saudi Arabia. Almost a month ago, (April 3), Iraq and Saudi Arabia had concluded a fresh treaty for mutual co-operation and for the solution of all disputes by arbitration. The life of the Treaty was

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1. Hans Kohn--*The Unification of Arabia in Foreign Affairs*, October, 1934, p. 103.

2. For the text of the Treaty with Yemen, see *Brit. & For. St. Pap.*, 1934, Vol. 137, pp. 670-683.



fixed at ten years, and all other Moslem States were invited to join it. Yemen joined it on April 7, 1936. The Iraqi-Saudi relation became more intimate when General Nuri Pasha, Iraqi Foreign Minister, visited King Ibn Saud in April, 1940, for the greater consolidation and security of all the Arab people. King Ibn Saud has already become a name to conjure with in Arabia. One writer has described him as the Cromwell of the Desert ; another regards him as the greatest Arab since the days of the Prophet. He has built up a great Kingdom ; he has restored order where lawlessness was the rule ; he has, to-day, become a figure loved and feared by all Arabs. On December 29, 1940, there was a plot against the King and his regime. The leader of the plot, Sherif Abdel Hamid Ibn Ohn, a descendant of the Prophet, was caught and sentenced to death. The King now sits on a secure throne. He has twenty sons to perpetuate his dynasty.

### The Hejaz Constitution

This Constitution was granted by King Ibn Saud to the people of Hejaz on August 20, 1926. It was amended (only those sections which provided for the Legislative Assembly) by another Royal Decree of July 13, 1928. The entire administration of the independent Kingdom of Hejaz is in the hands of His Majesty Ibn Saud, who is bound only by Shara laws (Art. 5.). Arabic is the official language ; Mecca is the capital. Justice is based on the Koran and the Sunnat of the Prophet. The charge of the Government has been left in the hands of an Agent-General appointed by His Majesty and responsible to him. The Agent-General is assisted by a Council of Ministers composed of five to six ministers, in charge of the following Departments : Sharia, Interior, Foreign, Finance, Public Education and the Military. The subject matters of each department are enumerated in detail in Articles 10-26. The Agent-General, who is also the

Viceroy, is the President of the Council of Ministers, and generally takes charge of the Department of the Interior as well. Due to the scarcity in the supply of properly trained and experienced Arabs of the Hejaz, some foreign Arabs have been given high posts in the state. Thus, the first Foreign Minister was Dr. Abdullah al Damluyi, an Iraqi. The next Foreign Minister was Sheikh Fuad Hauza—a Syrian. The first Minister Plenipotentiary of Wahhabi Arabia to the Court of St. James was Sheikh Hafidh Wahba, an Egyptian, who was also the first Minister of Education of the Government of His Majesty Ibn Saud.

The Foreign Affairs Department is divided into four sections, political, administrative, legal and consular. The Agent-General can control only the Administrative and the Consular sections, while the Legal and the Political sections are under the direct control of the Royal Court (Art. 19). The Financial Department is also divided into four sections, including Accountancy and Customs. The Directorate of Public Education is attached to the office of the Agent-General. Elementary education is free, and public education "comprises the diffusion of science, education, and the arts.....in accordance with the foundations of religion" (Art. 23). The Military affairs are especially reserved for His Majesty. There is also a Pilgrimage Committee constituted of all the chiefs of the Departments, and such notables as are appointed by the King, under the direction of the Agent-General. The Regulations issued by the Pilgrimage Committee require the sanction of the King before they can be enforced.

### The Legislative Assembly

Part IV of the constitution, amended by the Decree of July 13, 1928, provides for a Legislative Assembly. The number of members of the Assembly is limited by Royal Decree. At present, there are 14 members—5 elected by the people of Mecca, 3 each by Medina and Jidda, and 1 each by

Yanbu and Taif, <sup>1</sup> but the King "has the right to dissolve the Assembly or to change any one of their members at any time." The Viceroy is the President of the Assembly ; but in the House there will be a permanent representative of the Viceroy, appointed by the King. The Assembly can choose another representative who will preside when the Viceroy's representative is absent. The tenure of the Assembly is 2 years. Members must be 25 years of age or over, men of experience, knowledge, good conduct and not legally disabled. The following subjects are to be referred to the Assembly : (1) Budget, (2) Contracts, Concessions, or Schemes of Economic development, (3) Laws and regulations, (4) Employment of foreigners in the government service. The Assembly functions by dividing itself into two Committees, but the recommendation of each Committee is to be passed by the Assembly as a whole. Decisions are taken by majority. Two-thirds of the members, together with the President, constitute the quorum. If the Assembly rejects or modifies a scheme, which can be presented only by the Government, the Viceroy will return the scheme to the Assembly with an observation explaining the necessity of the measure. But, if the Assembly still refuses to pass it, the matter will be finally decided by the King. If the scheme is approved by the Assembly and yet is not put into force by the Government within two months, the Assembly, through its president, may refer the matter to the King. It is, thus, quite clear that legislative supremacy in Hejaz rests with the King.

### Local Government

Under Art. 32 of the Constitution, Jedda and Medina have "Administrative Councils" consisting of the Qaimaqan, his assistant, the chief officials and four notables, the latter chosen and nominated by the King, for only one year, though they are eligible for re-election. These Councils are to meet

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1. Philby - Arabia, p. 330.

at least once a week under the presidency of the Qaimaqan. The decisions of these Councils, in order to be effective, must be sanctioned by the King. Each District has a Council, constituted similarly, i.e. of the local chief, his assistant, the chief officials of the district and certain nominated notables. The decision of the district Council must pass through the Qaimaqan of the province to the Agent-General, who again must pass it to the King with his personal observations. When the decision receives the King's assent, it acquires legal validity (Art. 40). The Constitution also makes provision for village and tribal councils, consisting of the Sheikh as president and his legal adviser, together with two notables.

The constitution sets up a Department of Accounts consisting of a President and three members nominated by the king. It is attached to the office of the Agent-General. No sum whatsoever can be paid from the state treasury before it has been approved by the Department, which has also the power to inspect and control all the financial resources and expenditures of the state. Part VI of the constitution sets up another important department—the Inspectorate-General attached to His Majesty the King. It is entrusted with the task of inspection, supervision and control of all the Departments of the Government. The Inspector-General or the District Inspector under him, may stop any work, if it appears to him to be contrary to rules and regulations of the state. He may also ask for the trial or dismissal of of any guilty official (Art. 49). The District Inspectors submit monthly reports to the Inspector-General, who in turn, submits similar reports to the King.

Part VII of the constitution guarantees the rights, honours and security of employment of all Government employees, if they are efficient and honest. The last part (VIII) of the constitution makes provision for Municipal Councils at Mecca,

Medina and Jidda. These Councils are composed of landlords, "members of special crafts and professions," and notables nominated by the King or the Agent-General. The members of Mecca Council are not to exceed twelve, and those for Medina and Jidda, eight. The qualifications of these members are 30 years of age or more ; capability and competency ; ability to read and write Arabic well ; possession of legal and Shara rights and reputation of being men of good conduct. The life of these Councils is 3 years. The Council has the right to discuss in full all municipal affairs including the budget, which it can "draw up, modify or increase when necessary", of course, with the king's approval. The resolutions of these Councils are to be sent to the Agent-General who submits them to the Legislative Assembly, which again, after proper investigation and endorsement, will pass it to the king through the Agent-General (Art. 69). The directors of the municipalities are appointed by the King, but they are to answer in detail any enquiry or question put by any member of the Council, whose decision they are also required to carry out very carefully.<sup>1</sup>

It appears that the government of Hejaz, though regulated by a constitution, is absolutely personal ; the only limitations upon the King are those imposed by the Shara laws. Whether in the provincial government or in the district or municipal administration, the voice of the King, in cases of doubt, is the ultimate law. Not only the foreign and military affairs, but even the details of internal administration are controlled by the king ; the latter functions he discharges through the help of the Agent-General and the Inspectorate-General, who are personally responsible to him. The Nejd is also governed through a Viceroy ; but there the government is more personal and patriarchal. Anyhow, it must be admitted that what

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1. For the Text of the Hejaz Constitution— See, *Brit. & For. St. Paps.* Vol. 124 (1926), pp. 880—888 ; and Vol. 130 (1929), pp. 790—791.

with religious revivalism and what with a strong benevolent despotism, King Ibn Saud has completed with admirable success a very difficult task, viz., the consolidation of the nomad tribes and the establishment of law and order among them on a permanent basis. A country of 462,000 sq. miles, inhabited by a fairly homogeneous people of 4,750,000 souls, fearless and hardy, having an unshakable faith in the fundamentals of Islam, may well prove the nucleus of an All-Arabia Federation in the very heart of the Moslem world that spreads from the Gibraltar in the west to China and Sumatra in the east.

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## CHAPTER VIII

### PALESTINE AND SYRIA

Arabia, the cradle of Islamic religion and civilization, had always been divided into a number of little states, each under an independent chieftain, owing nominal allegiance to the Sultan of Turkey. This independence was well-marked in the south but in the north, Syria and Palestine passed into the hands of Mahomet Ali, Viceroy of Egypt, in 1831. In 1840, the Sultan with the help of his European allies got back these vilayets. During the reign of Abdul Hamid II, Palestine and Syria enjoyed peace and prosperity. But with the outbreak of the Great War of 1914-18, Turkey allied herself with Germany and thus became the enemy of Great Britain. The Allied Powers tried to create a revolt in the Arabian States against Turkey and various negotiations were started between the Arabs and Sir Percy Cox, the Chief Political Officer of the Mesopotamian Expeditionary Force, and Sir Henry Macmahon, the British High Commissioner in Cairo.<sup>1</sup> The correspondence (ten letters) between Sir Henry Macmahon and Sherief Hussein of Mecca was kept a close secret by the British Colonial Office and was published only in March 1939,<sup>2</sup> after much of its contents had already leaked out. In his first letter to Sir Henry, the Sherief, on the belief that Great Britain would help the Arabs "without any ulterior motives whatsoever," to "realise their firm and lawful intentions of making their country free from Turkish misrule, requested Great Britain to acknowledge the

1. See Philby—*Arabia* pp. 231-60.

2. *Cmd.* 5957 of 1939.

\*independence of Arab countries bounded on the north by Mersina and Adana up to 37° of latitude, on the east by Persia, on the south by the Indian Ocean and on the West by the Red Sea, the Mediterranean Sea up to Mersina." The letter also required "England to approve of the proclamation of an Arab Khalifate of Islam." In reply, Sir H. Macmahon declared: "Arab interests are English interests and English Arab." He reiterated his "desire for the independence of Arabia and its inhabitants" and his approval for an Arab Khalifate. But, as the Sherief pointed out, in his letter dated September 9, 1915, the High Commissioner's letter showed "ambiguity and tone of coldness and hesitation with regard to our essential point," i.e., the question of limits and boundaries of independent Arabia. On October 24, 1915, Sir Henry, with the approval of the British Government, laid down the limits and boundaries of independent Arabia, in a letter to the Sherief. He wrote: "The two districts of Mersina and Alexandretta and portions of Syria lying to the West of the districts of Damascus, Homs, Hama and Aleppo cannot be said to be purely Arab, and should be excluded from the limits demanded. With the above modification, and without prejudice to our existing treaties with Arab chiefs, we accept those limits. Subject to the above modifications, Great Britain is prepared to recognise and support the independence of the Arabs in *all the regions* within the limits demanded by the Sherief of Mecca."

But with regard to the Vilayets of Bagdad and Basra, the letter declared that "the Arabs will recognise that the established position and interests of Great Britain necessitate special administrative arrangements in order to secure these territories from foreign aggression, to promote the welfare of the local population and to safeguard our mutual economic interests." The letter also pointed out that as Great Britain would "advise" the Arabs as to the "most suitable forms of



Government in these various territories," the European officials "as may be required for the formation of a sound form of administration will be British." The Sherief in his letter dated November 15, 1915, renounced his "insistence on the inclusion of the Vilayets of Mersina and Adana in the Arab kingdom". But his letter of this date contained the following momentous words : "But the two Vilayets of Aleppo and Beirut and their sea coasts are purely Arab Vilayets and there is no difference between a Moslem and Christian Arab : they are both descendants of one forefather." Sir Henry in reply (December 14, 1915) refused to pronounce final decision on this matter, "as the interests of our ally, France, are involved in them both," and required time for further consideration. On January 1, 1916, the Sherief, however, clearly pointed out that "the citizens of Beirut will decidedly never accept such dismemberment" ; that there "is reciprocity and indeed the identity of our interests" ; that this "may oblige us to undertake new measures which may exercise Great Britain", and that "it is impossible to allow any derogation that gives France or any other power a span of land in those regions." To this the British High Commissioner, in his reply dated January 25, 1916, while extolling Anglo-French unity, remained deliberately silent.

Sherief Hussein, then, on this vague understanding with the British, raised the banner of revolt against the Turks in 1916. The other Arab rulers, Sheikh Mubarak of Kuweit, Idrisi Seyed of Sabya, Ibn Saud of Nejd, etc., assisted by British subsidies sided with Great Britain. The independence of Ibn Saud was recognised by Great Britain in a treaty signed on December 26, 1915 and ratified on the 11th July, 1916.<sup>1</sup>

But in May, 1916, England and France entered into a secret pact, known as the Sykes-Picot Agreement by which

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1. See—Toynbee—*Survey of International Affairs*, (1925), Vol. I, p. 272.

they divided the tableland between the Mediterranean Sea and the Persian Gulf, between themselves, as spheres of influence. This treaty was exposed to the world by the Bolsheviks in November, 1917. At this time the British Government felt it necessary to purchase the support of the Jewish world in their war against Germany and Turkey by promising to the Jews the establishment of a National Home in Palestine, in direct contravention of the wishes of the Arabs. The negotiation between Mr. Balfour and Dr. Weizmann, the leader of the Zionist organisation, resulted in what is known as the Balfour Declaration of November 2, 1917. The Declaration reads as follows: "His Majesty's Government view with favour the establishment in Palestine of a National Home for the Jewish people, and will use their best endeavour to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by the Jews in any other country." The Jews had settled in Palestine long before the Christian era. They are of the same blood as the Arab Moslems. They used to speak the same Arab language. But they were decidedly in a minority in Palestine, which form an integral part of the Arab world. The Balfour Declaration led the Jews to believe in the ultimate formation of a Jewish State in Palestine. On December 9, 1917, Jerusalem surrendered and General Allenby read his proclamation in seven languages, placing Palestine "under martial law, under which form of administration it will remain so long as military considerations make it necessary".<sup>1</sup> The Armistice was signed on 30th October, 1918, and under its terms the Turks evacuated from Medina and Yemen. On November 7, 1918, France and England published a joint note, supplementing the

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1. For the Proclamation.—see *The Hand book of Palestine and Transjordan*—by Luke and Keih-Roach, 1930, p. 28.

message of the British High Commissioner to the seven Arab leaders, resident in Cairo, on June 16, 1918. In the Joint Declaration, the two powers declared: "The intentions of France and Great Britain are at one in encouraging and assisting the establishment of indigenous Governments and Administrations in Syria and Mesopotamia, now liberated by the Allies, and in the territories the liberation of which they are engaged in securing and reorganising as soon as they are actually established. Far from wishing to impose on the populations of those regions any particular institutions, they are only concerned to ensure by their support and by adequate assistance the regular working of Governments and Administrations *freely chosen by the population themselves*."<sup>1</sup> It is really interesting to note that this Declaration does not say anything about Palestine or the Balfour Declaration of 1917. Prudently the Allied Powers kept silent on these points. Indeed, as Hans Kohn says: "For two years the military administration there did not dare, out of regard for Arab population, to proclaim the Balfour Declaration in Palestine. It was not till 1920 that it was mentioned publicly in a speech by the British representative there"<sup>2</sup>

In the middle of 1919, the allocation of the Mandate over Palestine became an acute problem. The Versailles Treaty was signed on June 18, 1919. The problem for the administration of the conquered territories was thrashed out in the Peace Conference, and there the idealism of Woodrow Wilson and the imperialism of the British and the French were synthesised in the conception of "Mandated territories," invented by General Smuts. Article 22 of the Covenant of the League of Nations provided for the Mandate System with regard to the former Turkish possessions in these words: "Certain communities formerly belonging to the Turkish Empire

1. See—*Cmd.* 5974 of 1939, Annex 1, pp. 50-51.

2. *Nationalism and Imperialism in the Hither East*, p. 129.

'have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. *The wishes of these communities must be a principal consideration in the selection of the Mandatory.*" The Mandatory was to be appointed by the League of Nations, was to administer on "the principle that the well-being and development of such people form a sacred trust of civilization", and under terms which shall, "if not provisionally agreed upon by the members of the League, be explicitly defined in each case by the Council," and to submit annually a report of administration for examination by the Permanent Mandates Commission of the League of Nations.

In Conformity to Article 22 of the Covenant, President Wilson sent the King-Crane Commission to find out the feelings of the Arabs of Palestine on the mandate and the would-be mandatory. The Commission found "strong sentiment favourable to complete independence for a united Syria (including Palestine), but if supervision was necessary, the United States was preferred to Great Britain. Strong opposition to the Zionist proposal was also indicated."<sup>1</sup>

But the secret Sykes-Picot Agreement got the better of Woodrow Wilson. France agreed to hand over the Mandate over Palestine and Iraq to Great Britain, while she was given the Mandate over Syria. As U.S.A. was not a member of the League, her voice was brushed aside. Italy objected against the Anglo-French settlement. At last on April 25, 1920, the Supreme Council of the League, sitting at San Remo, invested Great Britain with the Mandate over Palestine and charged her at the same time to fulfil the Balfour Declaration.

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I. See Stanuand Baker—*Woodrow Wilson and World Settlement*, Vol. II, pp, 205—22.

## .. Palestine.

From 1919 to May 1921, Palestine was under a British military administration. The country was divided into ten districts,—Beershaba, Gaza, Haifa, Hebron, Jaffa, Jenin, Jerusalem, Nablus, Nazareth, Tulkarem—each with a Military Governor under the Brigadier General Gilbert Clayton, Chief Political Officer to the Commander-in-Chief, General Allenby. The Ottoman Codes of Law were generally applied, and courts were again set up with Palestinian judges and officers, supervised by trained British Officers. Municipal Councils continued in office, and when their period expired fresh Councils were set up by nomination by the Military Governors. During this period four Arab Congresses were held in Damascus, Haifa and Jerusalem, all demanding the revocation of the Balfour Declaration, the immediate grant of self-Government, and the union of Palestine with Syria. On July 1, 1920, the military administration was replaced by a civil one, with Sir Herbert Samuel as the first British High Commissioner. The number of districts was reduced from ten to seven by the absorption of some minor districts into bigger ones. The seven official districts were : Beershaba, Galilee (Nazareth), Gaza, Jerusalem, Phoenicia (Haifa), and Samaria (Nablus). In October 1920, Sir Samuel set up the first machinery for introducing self-government in Palestine by gradual stages. He established a nominated Advisory Council consisting of 10 non-official members, of whom four were Moslems, three Christians and three Jews, and 10 official members. This Council worked for two years. But from July 1920, there were numerous clashes between the Jews and the Moslems. Anti-Jewish riots took a serious turn and Jewish immigration was stopped for the first time in May 1921. The causes of the riot were found out by a Commission whose report (Cmd. 1540 of 1921) pointed out Arab fears against a Jewish state in Palestine as the main

'cause. After the subsidence of these riots, Mr. Churchill, then Colonial Secretary, published a "Statement of Policy" on June 3, 1922, explaining the Balfour Declaration and the British Policy in Palestine. This memorandum drew attention to the fact (1) "that the terms of Declaration referred to do not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded in Palestine;" (2) that the Jewish National Home did not mean "the imposition of a Jewish Nationality upon the inhabitants of Palestine as a whole, but the further development of the existing Jewish community, with the assistance of Jews in other parts of the world, in order that it may become a centre in which the Jewish people as a whole may take, on grounds of religion or race, an interest and pride." For this purpose, the Balfour Declaration was to be incorporated in the Mandate, and Jewish immigration allowed in Palestine in accordance with the "economic capacity of the country to absorb new arrivals." Arab culture, religion or language were not to be allowed to be submerged. Palestinians were to be given self-government by "gradual stages and not suddenly." A special committee consisting entirely of the elected members of the new Legislative Council was to be set up "to confer with the Administration upon matters relating to the regulation of immigration." <sup>1</sup> The Arabs replied that the claim that the Jewish National Home was to be established "as of right and not of sufferance" was a preposterous one. They demanded the fulfilment of the pledges given by Sir Macmahon to the Sherief of Mecca, and included Palestine within the independent zone. They protested against immigration and expressed their fear of being swamped by an artificially created Jewish majority. They demanded an immediate grant of self-government. <sup>2</sup>

1. *Cmd.* 1700 of 1922, pp. 17-21.

2. See *Op. cit.*, pp. 22-28.

On August 10, 1922, a new Constitution was imposed on Palestine. There was to be a High Commissioner and Commander-in-chief invested with the highest executive powers to be exercised for giving effect to the provisions of the Mandate and the Balfour Declaration. He was empowered to divide the country into provinces for administration. All rights in relation to public lands were to vest in him. He could make grants or leases of public lands, mines or minerals. Subject to the direction of the Secretary of State, he could appoint such public officers of the Government as he might think fit, and all such officers would hold office during his pleasure. There was to be an Executive Council to assist the High Commissioner, composed in such manner as may be directed from time to time by His Majesty's Government. There was to be a Legislative Council consisting of 22 members, besides the High Commissioner, of whom 10 were to be official and 12 unofficial members, the latter being elected by primary and secondary elections from communal electoral colleges. Every male Palestinian citizen over 25 years of age was entitled to vote at the primary elections, and every 200 primary electors could return one secondary elector. English, Arabic and Hebrew were to be the three official languages. The Legislative Council might pass ordinances for the peace, order and good Government of Palestine, subject to the limitations imposed by instructions issued by His Majesty's Government. But it could not pass any ordinance suppressing freedom of conscience, and free worship of all forms. No ordinance was to be valid which had not been assented to by the High Commissioner, or by an Order-in-Council of His Majesty or by the Secretary of State. The High Commissioner could reserve any Ordinance for His Majesty's significance, while His Majesty could disallow within one year any ordinance to which the High Commissioner might have given his assent. Any dissatisfied

community was empowered to present a memorandum of grievances to the Council of the League, through the Secretary of State. The High Commissioner was also to confer, in all matters relating to the regulation of immigration, with a committee consisting of not less than one-half of the unofficial members of the Legislative Council.

The Judiciary was to consist of Magistrate's Courts; District Courts with jurisdiction in such civil and criminal matters as were not within the jurisdiction of the Magistrates' Court, and with an appellate jurisdiction; a Court of Criminal Assize with exclusive jurisdiction in capital offences; Land Courts; a Supreme Court acting as a Court of Appeal from the District and other Courts; and Tribal Courts for cases involving the application of local customs. There were also to be Moslem, Jewish and Christian Religious Courts with exclusive jurisdiction in matters of personal status, i.e., suits regarding marriage, divorce, alimony, guardianship, succession, wills, wakf or religious endowments, etc. The judgments of the Religious Courts were to be carried out by the process and offices of the Civil Courts.<sup>1</sup> The elections held under this constitution in March, 1923, were boycotted by the Arabs, and the Arab members who were first elected gradually dropped out one by one. On May 29, 1923, the High Commissioner announced that "His Majesty's Government have decided to suspend, for the time being, such part of the proposed constitution as relates to the establishment of a Legislative Council".<sup>2</sup> The Advisory Council was re-instituted, but this time composed of all British officials. Legislation was made henceforth by the High Commissioner's ordinances. On September 29, 1923, after the settlement of the Franco-Italian differences with regard to Syria, the French

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1. See—*British and Foreign State Papers*, Vol. CXVI., pp. 204, 224; also J. D. V. Loder—*The Truth about Mesopotamia*, etc. (1923), pp. 179-183.

2. *Cmd.* 1889 of 1923,



Mandate over Syria and the British Mandate over Palestine came into operation simultaneously. Both of them became 'A' mandates. The Palestine Mandate included the Balfour Declaration (Art. 2) ; the Mandatory was given "full powers of legislation and administration save as they may be limited by the terms of this mandate" (Art. 1). A Jewish Agency was given recognition to help the administration which was bound to facilitate Jewish immigration into Palestine, "but ensuring that the rights and position of other sections of the population are not prejudiced" (Art. 6). The Mandatory was empowered to maintain its force in Palestine, whose cost would be borne by the Palestine Administration (Art. 17). By Art. 25 the Mandatory could withhold the application of any clauses of the Mandate to Trans-Jordan, and was bound to submit an annual report of administration to the League Council.<sup>1</sup>

The Arabs immediately challenged the moral and legal validity of the Mandate. Moreover, as Hans Kohn points out, though it was an 'A' mandate, "it resembled a 'B' mandate in the provision that all powers of legislation and administration were to be invested in the mandatory Power. It differed from the mandates for Syria and Iraq in placing Palestine on the level of a British Colony."<sup>2</sup> All the high posts were reserved for British officials ; the supreme executive and legislative powers were vested in the High Commissioner ; the Civil service took a colonial character, and the language of 90% of the people was not to be the official language.

In October 1923, the High Commissioner tried to create an Arab Agency, like the Jewish Agency, to co-operate with the Administration ; but the measure failed. In 1925 Sir Herbert Samuel was succeeded by Lord Plumer who carried on a firm administration against the grumblings of the Arabs.

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1. *Cmd.* 1785 of 1922.

2. *Op. cit.*, pp. 141, 295.

In 1928 Sir John Chancellor succeeded Lord Plumer. In that year the Arab Congress demanded the immediate stoppage of the Jewish immigration and the grant of full self-government. The Wailing Wall incident occurred in September, 1928, and caused violent outbreaks in many parts of the country. Peace was restored by British troops brought from Egypt and Malta. On September 14, 1929, a Commission of Enquiry was appointed under Sir Walter Shaw. The findings and recommendations of the Shaw commission were published in Cmd. 3530 of 1929. It was found by the Commission that Jewish "immigrants have come into Palestine in excess of the economic absorbing powers of the country" (p. 106), and there were large sales of land between 1921 and 1929, in consequence of which a landless, discontented Arab class had been created (p. 162). "The Arab people of Palestine", the report said, "are united in their demand of a measure of self-government" (p. 162). In the London Conference, which was subsequently held, the Arabs demanded the cessation of all Jewish immigration. But the British Government refused to grant these demands, and in pursuance to a resolution of the Permanent Mandates Commission, June, 1930, they increased their military strength in Palestine. In May 1930, a Commission was appointed under Sir John Hope-Simpson to report on the problems of immigration and pressure on land. The report, published on October 20, 1930,<sup>2</sup> contained two important findings: (1) that "if all lands not yet occupied by the Jews had been equally divided amongst the Arabs, still the share of each Arab family will not be enough to enable it to maintain a decent standard of living;" and (2) that if improvements were carried out the maximum number of immigrants that could be settled on Palestine would not be more than 20,000 families. The Hope-Simpson Report as well as

2. Cmd. 3692 of 1930.

the White Paper accompanying it and endorsing its recommendations was thrown into the waste-paper basket as a result of severe agitation by Mr. Amery, Mr. Baldwin, Sir Austin Chamberlain, Sir John Simon and General Smuts. Mr. Macdonald, for his safety, wrote in the Times, on February 14, 1931 thus : "His Majesty's Government did not prescribe and do not contemplate any stoppage or prohibition of Jewish immigration in any of its categories." From 1930 to 1935 the Arabs organised and agitated for their demands. In December 1935, Sir Arthur Wauchope, the British High Commissioner, offered a Constitution in which the powers of the High Commissioner were retained, and a Legislative Council composed of 28 members—5 officials, 2 commercial representatives, 8 elected and 3 nominated Moslems, 3 elected and 4 nominated Jews, 1 elected and 2 nominated Christians, and 1 President from outside Palestine, who would neither vote nor debate—was proposed. The Arabs rejected the offer summarily. Soon afterwards revolts broke out in the country and British troops again tried to restore peace. Meanwhile negotiations were going on between the British Government and the Arabs represented by the King of Iraq, the Emir of Trans-Jordan, the Imam of Yemen, the King of Saudi Arabia, etc. General Nuri Pasha, the Iraqi Foreign Minister, did most to bring about a rapprochement between the British Government and the Arabs. On October 12, 1936, the Arab Higher Committee called off the strike. On November 5, the Peel Commission was appointed to enquire into the causes of the unrest and to make recommendations. Its report was published in July 1937.<sup>1</sup> The causes of the revolt were the same as in the revolts of 1920, 1921, 1929 and 1933, i. e., the Jewish immigration and purchase of lands ; the fear of ultimate political domination by the Jews ; the fervent nationalism of the

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1. *Cmd.* 5479 of 1937.

\*Arabs, accentuated by the independence of Iraq, Trans-Jordan and other Arab States (pp. 110-112). But the Commission recommended that Jewish immigration was to go on, regulated by "the economic absorptive capacity of Palestine" and subject to a "political high level" of 12,000 Jews per annum for the next five years. It did not recommend the grant of self-government. It proposed the partition of Palestine into three states, one Arab, one Jewish and one permanently mandated enclave comprising the Holy Places and the coastal region adjoining thereto. As the Commission itself reported, these proposals meant "that the Arabs must acquiesce in the exclusion from their sovereignty of a piece of territory, long occupied and once ruled by them." The Moslems from every part of the world condemned the partition as a measure of imperialism. In pursuance to the recommendation of the League Council, dated September 29, 1937, the British Government appointed the Woodhead Commission to give effect to the partitioning of Palestine. The Commission was boycotted by the Arabs, like the Peel Commission. It reported in October, 1938.<sup>1</sup> It rejected the proposals for partition on financial as well as political grounds. Though it was prepared to support plan "C" of the Peel Commission, yet it made various reserving clauses, and emphasised a customs union between the Arab, the Jewish and the mandated areas in Palestine. The British Government in a White Paper,<sup>2</sup> rejected the partition plan and invited the Jews and Arabs to discuss with them measures for peace and agreement. The conference ended in smoke and on May 17, on their own responsibility the British Government made their final proposals through a White Paper.<sup>3</sup> The proposals included the following: partition was impracticable; the expression "National Home" did not and would not mean

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1. *Cmd.* 5854 of 1938.

2. *Cmd.* 5893 of 1938.

3. *Cmd.* 6019 of 1939.

the creation of a Jewish State in Palestine ; that self-government would be developed in Palestine gradually ; that "the object of His Majesty's Government is the establishment within ten years of an independent Palestine State in such treaty relations with the United Kingdom as will provide satisfactorily for the commercial and strategic requirements of both countries in the future," as well as under such conditions that "the essential interests of the Jews and the Arabs are secured". After five years from the restoration of peace and order, a committee would be set up to make recommendations about a Palestinian Constitution in which an elective legislature might find a place. Jewish immigration was not to be stopped forthwith. There would be Jewish immigration for the next five years at a rate of 10,000 a year, together with the immigration of 25,000 Jewish refugees "as a contribution towards the solution of the Jewish refugee problem." After this "no further Jewish immigration will be permitted unless the Arabs of Palestine are prepared to acquiesce in it."

At present the Government of Palestine is constituted of the High Commissioner as the chief executive and legislative authority, under the Crown and the Secretary of State ; and the Executive Council composed of the Chief Secretary, the Attorney-General and the Treasurer,—ex-officio members—and such other persons holding office in public service of Palestine, as may be appointed by the High Commissioner, in pursuance of instructions of the British Secretaries of State.<sup>1</sup> There is also an Advisory Council, constituted by the High Commissioner, with the approval of the Secretary of State, consisting of the fourteen Heads of Departments under his own presidency. The fourteen Departments are the following : (1) Agriculture and Fisheries (including

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1. See—*The Royal Instructions to the High Commissioner and Commander-in-Chief*, January 1, 1932—Also—*Constitutions of All Countries*, Vol. I, British Empire, p. 554.

Veterinary and Forests); (2) Antiquities; (3) Customs, Excise and Trade (including Ports and Lights); (4) Education; (5) Finance; (6) Health; (7) Land Registration; (8) Land Settlement; (9) Law and Justice; (10) Police and Prisons; (11) Posts, Telegraphs and Telephones; (12) Public Works; (13) Railways; (14) Surveys.<sup>1</sup> The power of the Council is limited to advising the High Commissioner, who cannot promulgate an ordinance unless he has consulted it. In the matter of immigration, currency, divorce, grant of land, differential duties, discipline or control of the British forces by land, sea or air in Palestine, royal prerogatives, etc., the High Commissioner is bound to obtain previous instructions from one of the principal Secretaries of State.

For the administration of Justice, there are Magistrate's Courts, in each sub-district, trying petty criminal cases not punishable with more than one year's imprisonment, and civil cases of value not exceeding £ P. 100. The magistrates are Palestinians. Above these Courts are the four District Courts, each composed of a British President and two Palestinian judges, going on circuit. Serious criminal cases, excepting those punishable with death, and all civil cases of more than £ P. 100 in value are tried by them. They also hear appeals from the Magistrate's Courts. Crimes punishable with death are tried by a Court of Criminal Assize composed of the Chief Justice or senior British judge of the Supreme Court sitting with the District Court concerned. Apart from the District Courts there are two Land Courts, one at Jerusalem, and the other at Jaffa, composed of a British President and a Palestinian judge for deciding questions regarding ownership of land. The highest court in Palestine is the Supreme Court, composed of a British Chief Justice and one other British Judge and four Palestinian judges. It sits in two forms, as a Court of Appeal, hearing appeals

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1. Luke and Keith-Roach - *Op. cit.*, p. 210.

from all subordinate Courts, and as a High Court, in which capacity it receives applications of the nature of *Habeas corpus* and *mandamus* proceedings.

Besides, there are also Municipal Courts, Tribal Courts, Moslem and non-Moslem Religious Courts, the latter dealing with questions of personal status, Wakfs, religious endowments, etc. The proceedings of the court can be conducted in any of the three official languages of Palestine, viz. Arabic, Hebrew and English. The area of Palestine is 10,429 sq. miles and population, in 1939, 1,466,536, of whom 848,933 are Moslems, 424,373 Jews, 114,624 Christians. In 1922 the Jews were 11% of the population; in 1932 they became 17% and in 1939, they were 30%, while, combined with the Christians they are 37% of the population. Palestine has become one of the most important centres of international trade and commerce. Here meet the steamship lines, the air routes, oil-pipe lines, important railways, the East and the West. Haifa has become the third largest harbour in the Eastern Mediterranean. It is the most important point in the British imperial communications. But Palestine is undisputedly the land of the Arabs. The Arabs of Iraq, Transjordan, Syria, Yemen, Saudi-Arabia, are keenly watching the British policy in Palestine and are frankly in favour of the Palestinian Arabs. Indeed, in the future Pan-Arab State, which is almost a reality, Palestine will occupy an integral position. The native Jews of Palestine had sympathies with the Arab Moslems. But the Zionists from abroad wanted to deprive the Moslem Arabs of their birth right and to establish political domination over them by the sheer weight of numbers. The British policy of May 1939, has, however, clearly explained the nature of the Balfour Declaration, and there is not going to be henceforth any Jewish State in Palestine. The Jews have invested almost £20,000,000 of capital in Palestine and have done much to improve the economic and cultural conditions of the local people. But they must rest content

with their religious and cultural home in Palestine. On the other hand, the demand of the Arabs for freedom is just and should be fulfilled by the British Government at the earliest opportunity. When Great Britain took up the mandate for Palestine in 1920 her interest in that country was primarily strategic, and the political and religious considerations were subsidiary. But as her own experts point out, "the failure of the mandate has reversed the importance of these factors, and the strategic strength given through the control of Palestine has been almost outweighed by the political weakness arising from the hostility which Great Britain's mandatory policy has roused throughout the Arab World."<sup>1</sup>

### Syria

Syria tells us the same tale as Palestine. Under the Turkish administration she was enjoying considerable local autonomy. The European, and specially the French interests in Syria date from 1860, when as a result of the intervention of the European powers on behalf of the Christian Maronites against the Druses, Catholic Lebanon developed a strong pro-French mentality and began to offer a determined opposition to Pan-Syrian nationalism. During the Great War, the Allied powers, with the assistance of Arab forces under Feisal, son of king Hussein of Mecca, drove away the Turks from Syria. Already in 1916, France and England had signed the Sykes-Picot Agreement, and agreed to support an independent Arab State created out of the union of Damascus, Homs, Hama and Aleppo with the interior of Syria. But in the Peace Conference of Paris, France agreed to give Mosul vilayet and Palestine to Great Britain on condition that she would obtain a share in the oil; that Britain would support her against Woodrow Wilson in these matters; and that she would have a mandate over Syria and Lebanon—including Damascus, Aleppo, Alexandretta

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1. *Political and Strategic Interests of the United Kingdom*, Royal Institute of International Affairs Publication—1939, p. 144.



and Beirut. In Syria, however, Feisal assisted by British gold, had set up an Arab administration in October, 1918, with tacit British approval. But the news of the Peace Conference that Great Britain had agreed to Syria becoming a French mandate gradually leaked out. The Treaty of Versailles was signed on June 28, 1919, and Article 22 of the Covenant set up the principle of Mandate administration for territories belonging to the former Turkish and German Empires. The San Remo Conference of April, 1920, allocated the mandate over Syria to France and that over Palestine to Great Britain, in direct violation of the Macmahon pledges, the Sykes-Picot Agreement and the solemn Anglo-French Declaration of November 7, 1918. On March 11, 1920, Feisal had already become King of independent Syria with the unanimous support of the Syrian people. On July 3, 1920, the Syrian National Congress adopted a democratic constitution with considerable local autonomy. But on July 19, 1920, General Gouraud, who had arrived on November 22, 1919, at Beirut as French High Commissioner, sent an ultimatum to King Feisal to vacate. King Feisal refused and "pleaded that Britain should not abandon him."<sup>1</sup> But Britain turned a cold shoulder to Feisal, and after the battle of Khan Meisalun, where the Arab commander fell at the head of his troops, the French entered Damascus and began an era of persecution and oppression which resulted in the general insurrection of the Syrian Arabs in 1925. The first act of the French Government to weaken Arab nationalism was to divide Syria into many parts with separate Governments. On September 1, 1920, General Gouraud proclaimed the creation of the State of Great Lebanon by extending the frontiers of old Lebanon in such a way that the Maronites, together with other Christians became a majority over the Arab Moslems. The Arabs protested against this division, but in vain.

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1. Earnest Main—*Iraq, from Mandate to Independence*, 1935.

The second notorious achievement of the French was the partition of the rest of Syria into four other States. The territory of Alawis, on the coastal region, north of Lebanon, was proclaimed an independent territory on August 31, 1920, and on July, 1922, it was named, 'The State of Alawis,' after the "Alawis"—a mountainous people who had religious differences with the Arab Moslems. On September 1, 1920, the High Commissioner by an "arrêté" established a personal government, assisted by a Governing Commission composed of fifteen nominated members and having only advisory functions. On September 12, 1921, the Sanjak of Alexandretta was declared another autonomous division on the ground that there the 'Turks constituted a considerable portion of the people. Thus, the entire coastal area of Syria was cut off from her, and she was "driven to the desert."

Even this did not satisfy the French. Inland Syria was again divided into three States of Damascus, Aleppo and Jebel-el-Druz. On March 8, 1922, a provisional constitution of Lebanon vested the executive and legislative power in a Governor appointed by the High Commissioner. There was also set up a Representative Council composed of 16 Christians, 13 Moslems and 1 representative of the minorities at Beirut. The Governor was to be a Frenchman; the members of the Representative Council were to be elected indirectly on democratic franchise, but on the basis of separate electorates with reservation of seats. The powers of the Council were effective over "transferred subjects," including some portions of the budget, public works, social welfare, etc. Over "reserved subjects," it had only debatory powers. The initiative in all legislations was made the prerogative of the Governor. The Arabs strongly criticised the communal composition and limited powers of the Council. Another "arrêté," instituting a Council of State was signed by the Governor of the Lebanon on September 6, 1924, and

approved by the High Commissioner on September 11, 1924.<sup>1</sup>

On April 5, 1922, Jebel-el-Druz was proclaimed an independent state under French mandate, subject to an agreement signed on March 4, 1921, between the Mandatory Power and the local Druse chiefs. Damascus and Aleppo remained separate for some time ; then, they were federated together with the State of Alawis on June 28, 1922. Separate Representative Councils were also set up in Damascus, Aleppo and Alawis by a Decree of the High Commissioner, besides a Federal Council for these three States, created under the Statute of Federation of June 28, 1922. The debates in the Federal Council manifested a strong desire for political unification on the part of all the Arabs, excepting the Alawis, as a consequence whereof, General Weygand, the new French High Commissioner, dissolved the Federation and ordered the unification of Damascus with Aleppo in the summer of 1924. Alawis became a separate state again. The new State of Syria (Damascus and Aleppo combined) was given a Constitution by a Decree of December 5, 1924. There was to be an elected President, a Ministry appointed by him and an elected Council. But the system of administration was thoroughly colonial, as every act of the President and the Ministers required confirmation by the French High Commissioner.

In January, 1925, General Sarrail succeeded General Weygand, and at once tried to introduce a more liberal system of government. He gave the press its freedom, and introduced a national system of education quite in contrast with the sectarian and parochial policy of the previous regime. General Sarrail's able lieutenant, Leon Cayla, Governor of Lebanon, had formed a new electoral law on a national basis, whose first article read as follows : "In future no account shall be taken of the division into various religious commu-

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1. See—Toynbee—*Survey of Int. Affs.*, 1925, Vol. I., p. 357.

'nities in assigning seats in the Representative Council to the several sections of the Lebanese population. The members of the Representative Council shall be elected directly and by the List system of proportional representation." But the Jesuits and the anti-national Maronites raised a strong opposition against these liberal measures which had to be abandoned. The new elections of March, 1925, were held under the old electoral law of 1922.

The French administration in Syria suffered from certain serious defects. The French officers were arrogant; they knew little of the language and customs of the people. The French judicial system was also defective; French judges were "unacquainted with the country's laws and ignorant of Arabic." Peace was maintained by a big standing army and espionage. France had deliberately allowed 100,000 Armenians to settle in Syria and Lebanon; and this made the economic problem very acute. Discontent was rife and from 1919 to 1925 Syria had five insurrections, suppressed by force. In 1925, due to the despotic and insolent behaviour of the French Governor, Captain Carbillet, against the Druses, a revolt sprang up in Jebel-el-Druze, under the leadership of Sultan Pasha-el-Atrash, a popular hero who had helped King Feisal to win the independence of Syria. The People's Party, founded in February, 1925, and composed of the best intellectuals of Syria, welcomed the insurgents. The French arrested the leaders of the party, though some of them, including the President, Dr. Shahbander, fled to Jebel-el-Druz, where they raised the Arabian national flag and set up a Provisional Government. The latter exhorted the people to fight and win, and passed a resolution demanding "the complete independence of Syria, one and indivisible, both the coastal region and the interior; the establishment of a national Government, and the free election of a Constituent Assembly to draft the constitution; the withdrawal of the foreign army

of occupation and the creation of a national army to guarantee security and apply the principles of the French Revolution and the rights of man." <sup>1</sup>

General Sarraïl was soon recalled and succeeded by Henri de Jouvenal. The new High Commissioner made a series of promises to the Arabs, but all in equivocal language. Then he tried to keep the Lebanese away from the Arab insurgents by giving them a more liberal Constitution which was actually submitted before the Lebanese Council in May, 1926, and promulgated on May 23, 1926, in the teeth of opposition of the entire Moslem community. Lebanon became a separate and independent state, but not sovereign. The Mandate continued to be an integral part of the Constitution. There was a bicameral legislature, the Senate having 16 members, of whom 9 were elected and 7 nominated by the High Commissioner. The Christians got 8 seats, the Moslems 7, and other minorities 1. The Chamber of Deputies (the old Lebanese Council) continued as before but was re-elected on the basis of separate electorate with reservation of seats in 1929. The two Houses sitting together, elected the first President of the Lebanese Republic, M. Charles Debbas, a Greek orthodox, on May 26, 1926. The French High Commissioner retained to himself the right "to veto and annul all the decisions of the Lebanese authorities if he holds that they conflict with the requirements of the Mandate, the country's security, the preservation of order or international obligations." The Arabs non-co-operated with this Constitution, and Jouvenal had to carry on administration with the help of French bureaucrats. At long last, the High Commissioner became convinced that there was no way to restore peace in the land but by entering into a treaty with Syria, thus terminating the Mandate. This decision he had the courage to express before the Permanent Mandates Commission, and

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1. Quoted by Hans Kohn—*Nationalism and Imperialism in the Hither East*—p. 192.

in accordance thereto, he opened negotiations in Paris with the representatives of the Syrio-Palestine Congress—Emir Shakib Arslan, Ikhsan el Jabry and Emir Michael Lutfallah. But when Jouvenal was about to find out a solution, the French Government turned a *volte face*, broke off all negotiations and sternly refused to concede the Syrian demands. Jouvenal resigned, and Henri Ponsot took over the charge in October, 1926.

The war of Syrian independence lasted 18 months, and then it was ended in June 1927, by the suppression of the Syrian Moslems by French arms. The censorship of the press, the restriction of civil liberties, frequent court martialling, etc., went on as before. The Lebanese also showed signs of unrest against the corrupt French administration and various French methods to widen the gulf between the different communities. On October 17, the French Government modified the Lebanese Constitution. The powers of the Executive were increased; the two Houses were combined into one and one-third of its members were appointed by its President. In February, 1928, after the resignation of the Ministry of Ahmed Nami Bey (pro-French), and the formation of the liberal Cabinet by Taged Din, the martial laws were abolished and writs for the election of the National Constituent Assembly for Syria under the not-too-liberal communal electoral law of 1922 were issued. In the April election the nationalists came out victorious with a preponderant majority, inspite of the Government's tampering with the election.

The Syrian National Assembly accepted the Consitution drafted by its Committee on August 2, 1928. Under this Constitution Syria was to become an independent, sovereign, republican, but parliamentary State, with a unicameral legislature, which would elect the President of the Republic for five years, and to which the ministry would be responsible.

Every male citizen over 20 years was to have the franchise. The Constitution declared all the Syrian territories, separated from each other since 1921, as one indivisible political unit (Art. 2). It invested the President with the right to grant amnesty, to conclude international treaties, to appoint the Prime Minister and diplomatic representatives, and to declare martial law in emergencies. It made certain provisions for the organisation of the army. The French High Commissioner demanded the modification of the most radical sections, especially as there was no mention in the Constitution about the rights of the Mandatory power. A tug of war ensued between the Assembly and the High Commissioner, and the latter ordered adjournment of the Assembly on August 11, 1928, for three months, and again on November 5, 1928, for three months, and lastly on February 15, 1929, for an indefinite period. On May 14, 1930, the High Commissioner dissolved the National Constituent Assembly, and on May 22, 1930, promulgated the Constitution as drafted by it, *but with the addition of a clause* in Article 116, securing the due discharge by France of her mandatory obligations in Syria until a treaty had been concluded between the two states to regulate their mutual relations. Art. 2 was also altered slightly. Instead of the expression "the acts of the partition to which they (the Syrian territories) have been subjected since the end of war, shall be ignored," a vague expression was put, viz., that Syria was an indivisible political unit.<sup>1</sup>

At the same time the Constitutions of the Lebanese Republic (modified on May 8, 1929, as a result whereof the powers of the President were further increased), the autonomous government of Latakia (formerly the State of Alawis), the autonomous government of Jebel-el-Druz, and the autonomous Sanjak of Alexandretta—were promulgated anew. Each of these Constitutions was framed on the model of French

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1. See—*Brit. and For. St. Paps.* 1930, Vol. 132, p. 741.

colonial administration. There was a Governor at the head with supreme executive and legislative powers, appointed by and responsible to the High Commissioner ; and a Representative Council with mere advisory powers. In Latakia State, the Council had two-thirds elected members, but in Jebel-el-Druz, there were only nominated members.<sup>1</sup> These separate administrations, with their different degrees of responsibility, caused permanent looseness in the internal consolidation of all-Syria, and helped to perpetuate French domination. For all-Syrian interests, the High Commissioner decreed the existence of a "Conference for Common Interest," composed of delegates from the various governments under the Mandate, to advise him in economic and other matters affecting the several states in common.

In November 1931, M. Ponsot announced the holding of elections under the new Constitution, which were actually held from December 1931 to March 30, 1932, and there was a good deal of tampering with the elections by the government, free fighting in the streets, annulling of elections and the holding of re-elections. The Chamber ultimately consisted of 53 Moderates and 17 Nationalists. Suddenly M. Ponsot was recalled and M. de Martel was appointed in his place. On November 14, 1933, the new High Commissioner put before the President of the Republic and the Cabinet of five ministers the text of a treaty which, he said, was to be signed by them in forty eight hours. Though it was signed by them, yet the moment the news of its conclusion reached the public there was a tremendous agitation. The Syrian Chamber, which was a moderate body, rejected the treaty on November 21, 1933.

By this treaty, the capitulatory regime was to be continued ; any number of French troops was to be stationed at any place ; the military zones and the French army were to enjoy

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1. For the Lebanese Constitution—see *Brit. and For. St. Paps.*, Vol. 127 (1927) p. 831, and Vol. 130 (1929), p. 930. For the Constitution of Jebel-el-Druze—see, *Ibid*, Vol. 132 (1930). pp. 756-61.



extra-territoriality. In the appointment of foreign advisers, magistrates and officials, who must be French, the French Government had as much right to determine their quality and number as the Syrian Government. By Art. 8, the Syrian Government was to recognise and consecrate the existing partition of the country. It was to be a treaty of alliance and to remain valid for 35 years. It is no wonder, therefore, that the Syrian Chamber rejected it in 45 minutes.<sup>1</sup> The High Commissioner suspended the Chamber, by way of punishment.

Things continued in the same way for two and a half years. The Syrians became tired of French promises. A general unrest spread again. By a decree of January 23, 1936, Count de la Martel ordered a further sub-division of Syria into eight new and independent provinces each with independent financial and administrative organisations. But this project was dropped as a result of the Syrian rising in Jan.—Feb., 1936. Criticising this projected partition Olberg writes : "The division of the country cannot be justified either on economic or administrative grounds.....Political motives dictated the division, namely the desire to weaken the power of the nation as a whole ; the 'States,' parties, religious denominations, minorities, were played off systematically one against another in the interests of French Colonial policy."<sup>2</sup>

The Syrian rising of January 1936, started by way of closing of the markets, the boycott of foreigners, and "disorder took place at Damascus, Homs, Aleppo and Deir-ez-Zor in which sixty were killed and hundreds wounded."<sup>3</sup> The Egyptian activities of 1935, that resulted in the Anglo-Egyptian Treaty of 1936, stirred up the minds of the Syrians.

1. For details see-George Antonius—"Syria and the French Mandate" in *International Affairs*, July, 1934. pp. 530-534.

2. Paul Olberg—*France in Syria*—in *The Contemporary Review* March, 1937, pp. 306-307.

3. Charles Andre Julien in *Foreign Affairs*, July 1940, p. 95.

Mr. Toynbee says that the educated elements of the town population played a predominant part in these agitations which were marked by discipline and order, and maintained by para-military formations, especially at Damascus and Aleppo.<sup>1</sup> The French failed to suppress the movement by terrorisation and on February 25, 1936, M. de Martel agreed to recognise the "legitimate aspirations of the Syrian nation." On March 1, 1936, the French Government promised to grant Syria rights equal to those accorded by Britain to Iraq. To this end, a conference was convoked by Mr. Vienot, the Under-Secretary to the French Foreign Ministry, which agreed to end the mandate in Syria. On September 3, 1936, the Syrian delegation headed by Hashem Bey el-Attassi signed a protocol with M. Vienot at Paris. This was followed by the signature on December 22, of the Franco-Syrian Treaty of Friendship and Alliance, which was ratified by the Syrian Parliament on December 26, 1936. On November 13 of the same year, Lebanon signed a similar treaty with France and ratified it on November 17, 1936.<sup>2</sup> The provisions of the Franco-Syrian treaty followed the model of the Anglo-Iraqi Treaty of 1930. It contained nine articles, a separate Military Convention, and a number of minor protocols and annexes in which the details of application of the treaty were laid down. The first article stipulated that there should be perpetual friendship and alliance between France and Syria. The other articles declared that France recognised the full autonomy of Syria and undertook to support the candidature of Syria for membership of the League of Nations. In foreign affairs, Syria was to consult the French Government and not to enter into such alliances or treaties with foreign powers as would be prejudicial to France. The two parties agreed to come to each other's assistance against any aggression on Syrian territory. By the Military Convention, France

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1. See—*Survey of International Affairs*, 1936, p. 753.

2. See *The Times*, November 18, 1936, p. 13b.

reserved, without prejudice to the sovereignty of the Syrian Government, the right to maintain armed forces in Jebel-el-Druze and in the territory of Latakia. She was also to have the right to use two aerodromes in Syria. Syria was obliged to hold her railways, roads, bridges, ports, etc., at the disposal of the French Forces and warships in case of necessity. The Syrian Army was to be composed of one division of Infantry and one brigade of Cavalry, with necessary auxiliaries—all trained by French instructors and equipped as far as possible with arms and materials of the French pattern. The minorities in Jebel-el-Druze and Latakia were to be given "special form of administration" in conformity to the recommendations of the League of Nations. France and Syria were to give each other most-favoured nation treatment in commerce. French ambassador in Damascus was to have precedence over other ambassadors, while Syria would be represented in Paris by a Minister Plenipotentiary. The treaty was to last for 25 years.

Though the Syrian Parliament had ratified the treaty, the French Government hesitated to do its part. The Franco-Turkish dispute over the Sanjak of Alexandretta was settled by the decision of the League of Nations, dated the 16th December, 1936, by which the Sanjak was to be independent in its internal matters; but Syria was to remain responsible for foreign affairs. Turkish was to be the official language, and the territory was to be demilitarised—a Franco-Syrian treaty guaranteeing its inviolability. But the delay of the French Government in ratifying the Franco-Syrian treaty of 1936 led the Syrians to believe that France wanted to kill the Treaty. The extremist elements led by Dr. Shahbandar, chief of the "nationalist bloc," declared that a *Jihad* was necessary to compel France to honour her pledges. Under such circumstances, the Syrian Prime Minister, Jemil Mardam Bey met the French Foreign Minister, M. Bonnet, at Paris in August 1938. On November 14, they issued a joint declara-

tion in which they expressed hope that the Syrian Parliament would ratify the treaty, not later than January 20, 1939, while the French Parliament would do the same thing not later than January 31, 1939 ; and the functions of the Mandatory Power would be transferred to the Syrian Government during next February. Syria was to be admitted to the League of Nations before September 30, 1939.

No sooner had the Syrian Prime Minister returned to Damascus than M. Bonnet "under pressure of intrigues in the Senate Foreign Affairs Committee, declared that for the moment he would not bring the treaty before the Chamber for ratification."<sup>1</sup> Immediately signs of unrest showed themselves in Syria. Jenil Mardam Bey resigned. Ministerial changes followed in quick succession. The High Commissioner took over the police power and in March occupied Damascus with troops. In July, 1939, he granted further autonomy to the minorities just to set them against the Syrian Moslems. To crown all, the Constitution was suspended on the 9th. of that month ; national leaders were arrested and thrown into prisons ; and lastly, the High Commissioner declared that the country should harbour "no illusions as to the permanence of French rule in Syria." The Franco-Turkish problem with regard to Sanjak was again raising its head, and France, in order to have a peaceful neighbour to Syria, ceded Alexandretta to Turkey by an agreement of June, 1939. Before the end of the year Europe was plunged into another Great War, and Syria declared war against Germany. But with the collapse of France in June, 1940, General Mittelhauser, in agreement with M. Puaux, the French High Commissioner, and after consultation with General Weygand, who had flown from France to Syria for that purpose, declared cessation of hostilities on June 28, 1940. The British Government, however, declared on July 1, 1940, that H. M.'s Government "could not allow Syria or Lebanon to be occupied by any

1. *Foreign Affairs*, July, 1940—*op. cit.*, p. 696.

hostile Power or to be used as a base for attacks upon those countries in the Middle East which they are pledged to defend or to become the scene of such disorder as to constitute a danger to those countries.”<sup>1</sup>

The French administration in Syria is, perhaps, the blackest in the history of Mandate administrations. France has suspended the constitution of Syria; suppressed political liberties of the people; created and fostered communal troubles; monopolised the Syrian markets quite in violation of the rights of “A” class mandate; crushed the Syrians by heavy taxation and by increasing the expenses of the huge French Army in Syria; has done practically nothing to promote national education, and agricultural or industrial development of the country. Out of the total population of Syria, which is 3,630,000, there are 1,514,755 Moslems, 505,419 Christians, including 186,676 Maronites; 227,930 Alawis; 86,125 Druzes; 151,326 of the Orthodox Church, besides several thousands of Greek Catholics, Armenians, etc. There can be no doubt that Syria is the land of the Arabs, who form one single nation. Syrian nationalism is not religious or communal. As Toynbee points out. “The Syrian Nationalist Bloc also included Christian (and especially Orthodox Christian) adherents who were as whole-hearted in their nationalism as the Coptic members of the Wafd were in Egypt.”<sup>2</sup> Again, as George Antonius pointed out, the whole of Syria is “a remarkably compact geographical unit.”<sup>3</sup> In the interest of humanity and political justice it is, therefore, an urgent necessity that Syria should be made an integral and completely autonomous, self-governing State, having unfettered discretion of either uniting with other Arabian States, or preserving her separate political entity, as she may be pleased to decide.

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1. *Reesing's Archives* (1940-43)—p. 4125A.

2. *Survey of Int. Aff.*, 1936, p. 752.

3. *International Affairs*, July, 1934, *op. cit.*, p. 524.

## APPENDIX

ALGERIA—France conquered Algeria in 1830. Civil Government was finally set up after 1870, and the policy of 'rattachement' or union with the metropolis was given up in 1896. At present, there is a Governor-General at the head of the Algerian administration. He is irresponsible and is assisted by a Secretary-General, several bureaux, and the "Conseil de Gouvernement", like an Executive Council. The Army, the Navy, French justice, public instruction and treasury, are controlled by respective metropolitan ministers. Algerian peoples are represented in (1) The Superior Council of Government, composed of 21 officials, 7 nominated members, 31 members elected indirectly and separately by different sections of the people; and in (2) The Financial Delegations, composed of 72 members, 24 chosen by the French colonists, 24 by French non-colonists, and 24 (7 Kabyles and 17 other Moslems) by the natives. Both these councils have merely advisory powers, the former on administrative questions, the latter on financial and economic affairs; but none of them can discuss political issues. Algeria proper is divided into 3 departments after the metropolitan fashion, with prefects and departmental councils. Southern Algeria is under military administration. By the law of Feb. 4, 1919, natives, 25 years old, monogamous, resident in French territory or protectorate for 12 years, can acquire French citizenship with right to vote, if they have, in addition, served in the army, or know French language, or be pensioners, or holders of decorations or titles from the State, or own considerable property or if they were born of those who have already acquired French citizenship. Of the total population of Algeria, 7,234,684 are native Moslems, and only 987,252 are Frenchmen. Algeria is represented in the French Parliament by 10 Deputies and

6 Senators. France is determined not to give Algeria autonomy or responsible Government. French colonial politics can not even dream of anything like Dominion Status. France's policy in Algeria has all along been one of political repression and economic exploitation.

MOROCCO—After an expedition against the Sultan of Morocco France established a protectorate over the major portion of the Sherifian Empire by the Treaty of March, 1912. By the Franco-Spanish Convention of Nov. 27, 1912, a Spanish protectorate was established in the North-Western Zone, while by the Convention of Decem. 18, 1923, Tangier was declared an International Settlement. In the French, Spanish and Tangier Zones there are 6,298,528, 738,400, and 36,000 Moslems respectively. In French Morocco, the head of the State is nominally the Sultan, but all his acts are supervised, controlled and executed by the French Resident General who is also the Minister of Foreign Affairs and the chief of the administrative services of Morocco. The *Maghzen* or the native Government is composed of only native ministers (Grand Vizir, and the Ministers of Justice and Habous). There are various French services directed by a Council of Directors, distinct from the *Maghzen*. There is a Council of Government, like a representative assembly, instituted in 1919, by an "arrêté" of the Resident General, and composed of two sections, the French and the native, both elected separately on functional basis, i.e. by their respective Chambers of Commerce, Industry, Agriculture, etc. It has only advisory powers.

TUNIS—France invaded Tunis in 1881, and by the Treaty of Bardo of May 12, 1881, and the Convention of Marsa of June 8, 1883, established a protectorate over the country. Though the head of the Regency is the Bey, yet he is under the French Resident General in the same way as the Sultan of Morocco. There is a Secretary-General to assist the

Resident. There is also a "Council of Ministers and Chiefs of Services", composed of native Ministers of the Bey (Chief Minister, Chancellor and Minister of Justice), and French officials, including the Resident, the Commander-in-Chief, the Vice-Admiral, etc. The Great Council of Tunis, established in 1922, is composed of 56 French and 41 native members, the majority of whom represent the general people, the minority (22 French and 18 native members) represent the different economic interests in the country. The two sections deliberate separately unless summoned by the Resident to sit together. The Great Council can examine the Budget and discuss only such economic and administrative matters as may be submitted before it by the Government. There is another Council--the Superior Council--composed of the Resident, 3 native Ministers and 3 French officials, together with a mixed delegation from the Great Council, composed of 7 French and 7 native members. It is presided over by the Resident-General, and simply approves the measures discussed by the Great Council. The population of Tunis is 2,608,813 of whom only 213,205 are Europeans. French nationality was offered to the Tunisians by the law of Dec. 20, 1923.

The people of Algeria, Morocco and Tunis are brave, handsome and almost white. They have all been inflamed by a strong national sentiment. But France has crushed the national movement in Morocco by a five-year (1921--1926) bloody campaign against Abdul Karim, the great Rifi leader, and suppressed the Dusturi movement in Tunis by threats and persecutions.

LYBIA--annexed by Italy on Nov. 5, 1911. The Government is an absolute one with an irresponsible Governor and an Advisory Council. The total population of the country is 900,000 of whom 90% are Moslems.

YEMEN--There are 3,500,000 Arabs in Yemen, ruled by



an absolute ruler, Yaman Yehia of the Zaidi sect, assisted by an Advisory Council.

**TRANSJORDAN**—placed under British mandate in 1920. A government with Emir Abdullah as the ruler, was set up in April, 1921. After the Anglo-Transjordan Treaty of Feb. 20, 1928, a National Assembly was summoned, an Organic Law passed, and constitutional government set up. The Treaty was modified in 1934, and the Emir was given the right to appoint consular representatives in the neighbouring States. The Emir is the executive and legislative head, advised by an Executive Council. There is a Legislative Council composed of the Executive Councillors and 16 other members, elected indirectly by the people. Transjordan Government cannot violate the Treaty of 1928 which has secured British imperial interests in the East. The population of Transjordan is about 300,000, and the Government, though constitutional, is irresponsible.

**U. S. S. R.**—Six out of the eleven constituent republics of U. S. S. R. are Mahomeddan. These are : Azerbaidjan S.S.R. with a population of 2'9 millions (1921) ; Uzbek S. S. R., pop. 5 millions (1924) ; Turkmen S. S. R., pop. 1'3 millions (1924) ; Tadjik S. S. R., pop. 1'3 millions (1929) ; Kazakh S. S. R., pop. 6'8 millions (1936) ; Kirghiz S. S. R., pop. 1'3 millions (1936). The figures within brackets indicate the years when these republics became constituent units of the U. S. S. R. There is another autonomous republic, that of Kara Kalpak included within Uzbekistan. All these republics were formed out of the groupings and re-groupings of areas in Samarkand, Khiva, Bokhara, etc., which were formerly ruled by despotic Emirs and Khans, under the suzerainty of the Czar. The national and socialistic movements in Russian Turkistan got an impetus from the "Declaration of People's Rights" made by the Bolsheviks, and the "Proclamation to the Mahomeddians of Russia and the Orient", made by Lenin and Stalin. The system of government in each of these republics is the

usual Soviet one, under Arts. 16, and 57-63 of the Russian Constitution of 1936. The highest legislative organ in these republics is the Supreme Council elected by the people directly, for a term of four years. This Council elects its Presidium whose powers are defined by the Constitution of the Republic. It also forms the Council of People's Commissars (like the ministry) i.e., the highest executive and administrative organ, responsible to it during its session, and to the Presidium, when the former is out of session. Thus, "the free expression of the will of the toiling peoples is the supreme law." Franchise is universal, direct, secret, irrespective of race, creed, sex, property or educational qualifications. Minimum age of a voter is 18 years.

**DUTCH EAST INDIES:—**The Dutch East Indies include Java, Sumatra, Celebes, Dutch Borneo and other islands. The total population amounts to near about 70 millions of whom 98% are natives, 1·7% Orientals, '3% are Europeans. 70% of the population are Mahomeddan. During the 17th and the 18th centuries, these islands were conquered by the Dutch East India Company, after whose dissolution in 1798, administration was taken over by the Dutch Crown. The system of government was thoroughly despotic, based on the principle of forced labour and economic exploitation of the natives. Changes in the form of government were made in 1917 and again, by the Netherlands India Constitution Act of 1925. At present there is an irresponsible Governor-General at the top of the local administration, as the chief executive authority, assisted by an Advisory Council, whose members (4 to 6) together with the Governor-General, are appointed by the Crown. There is a powerless assembly, "Volksraad", with a Chairman appointed by the Crown, and 60 members of whom 22 are nominated, and 38 elected by separate electorates for Europeans, Natives etc. In the Residencies, into which the Provinces are divided, local autonomy has been

introduced, but always subject to the over-riding powers of the Provincial Governors, the Governor-General, and the Home Government. There are numerous Native Princes under the paramountcy of the Dutch Crown.

CHINA & INDIA—Out of a population of over 450 millions there are 50 millions of Chinese Moslems, mostly concentrated in Shensi, Yunnan, three Eastern Provinces, Kansu, Hopei, Honan, Sinkiang, Shantung, Szechuen and Anhwei. Chinese Moslems are nationalists and satisfied with the republican form of government. In India, there are 90 millions of Moslems, some of whom are nationalists, some separationists, but all demanding independence from British control, just like the Hindus. The Communal Award, announced by Mr. Macdonald, on behalf of the British Government, has confirmed separate electorates and provided for statutory reservation of seats for the Moslems in the Central and Provincial legislatures. The bulk of the Hindus, especially those of Bengal and the Punjab where the Moslems are in the majority, are opposed to it. The Moslems want to retain the award, though they are dissatisfied with the Government of India Act of 1935, which has introduced dyarchy in the centre and autonomy in the provinces, subject to the special responsibilities and powers of the Governor-General and the Provincial Governors. Out of 11 Provinces, the Moslems are in the majority in four viz. N. W. Frontier Province, Sindh, the Punjab and Bengal. The Muslim League under Mr. Jinnah's inspiration has considerable hold over the Moslems. Its members want to form independent Moslems States. In Bengal, however, the Moslems under the leadership of Mr. Fazlul Huq, are joining hands with the Hindus and making tremendous efforts to evolve a common nationalism.

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